United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

77-1049

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

P
P/S

UNITED STATES OF AMERICA,

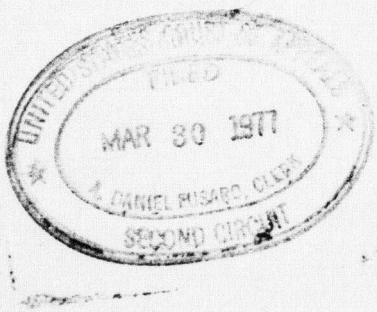
vs.

GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr.,
Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York.

APPENDIX FOR APPELLANT

DARNELL BLACKETT
Attorney for Defendant-Appellant
401 Broadway
New York, New York 10013
(212) 925-3552



10524

LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N.J. (201)257-6850 | New York, N.Y. (212) 563-2121 | Philadelphia, Pa. (215) 563-5587 | Washington, D.C. (202) 783-7288

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Relevant Docket Entries	1a
Indictment (Filed August 29, 1975)	3a
Excerpts From Trial Transcript Before Hon. Milton Pollack, U.S.D.J. on November 22, 23 and December 28, 1976 . .	10a
Defendant's Exhibit A — Report of Special Agent Joseph F. Kelly	114a
Defendant's Request For Charge	118a
Charge to Jury	124a
Sentencing Minutes	162a
Notice of Motion for Judgment of Acquittal or in the Alternative for a New Trial (Filed November 30, 1976) . .	171a
Defendant's Motion	172a
Affidavit of Richard F. Lawler in Opposition to Motion	174a

BEST COPY AVAILABLE

RELEVANT DOCKET ENTRIES

(pp. 1a-2a)

FOR U.S.:

Allen R. Bentley, AUS,
791-1957

vs.

1. OSVALDO ROSADO,a/k/a Cano Montijo
2. GUILLLERMO ROSADO,JR., a/k/a William Montijo,Jr.
3. RUBIN ROSADO,a/k/a Rubin Montijo

1 | 3

For Defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	
J.S. 2 mailed	Clerk					
J.S. 3 mailed 1,2	Marshal					
Violation	Docket fee					
Title						
Sec.						
26:5861(f) Unlaw. making firearms.(Ct.2)						
26:5861(d) Unlaw. possess. of firearms.(Ct.3)						
26:5861(e) Unlaw. transfer of firearm.(Ct.4)						
18:371 Consp. so to do.(Ct.1)						

DATE	PROCEEDINGS
8-29-75	Filed indictment. B/W ordered as to Rubin & Guillermo Rosado. Owe
9-5-75	Osvaldo Rosado(atty. present) Pleads not guilty. Deft. continued remanded in lieu of bail fixed by Mag. in the amount of $5,000. Case assigned to Judge Pollack for all purposes. Werker,J.
9-24-75	Filed Govt.'s notice of readiness for trial.
9-18-75	G. Rosado & R. Rosado- bench warrants issued.
10-23-75	Osvaldo Rosado(atty. present Julius Wasserstein)Case called. Set for trial on 11-13-75 at 10AM. room 519. Deft. remanded. Pollack,J.
12-22-75	All Defts-filed documents forwarded by Magistrate Schreiber: docket sheets,criminal complaint, disposition sheet, appointment of counsel & financail affdvt.
12-24-75	OSVALDO ROSADO-entered and filed nolle prosequi. Pollack,J.

-28-76	Rosado,G.) transferred to Suspense docket. Gagliardi,J. Rosado,R.)
3-26-76	C. Montijo-filedMagistrate's Orig. temporarycommitment (no return indica
8-11-76	Filed documents forwarded from the Southern District of Florida-pur. warrant of removal (Magistrate's proceedings for deft. Rosado).
9-08-76	Filed Govt's notice of readiness for trial.
9-10-76	Filed warrant for arrest of deft. G. Rosado. Subject arrested in S/Fla. 7-9-76.
9-15-76	Filed Govt's affdvt. re: w/h/c ad pros. for Osvaldo Rosado ret: 9/24/76.
-18-76	Filed Govt's request to charge.
1-22-76	Guillermo Rosado-(atty. Darnell Blackett) jury trial begun before Judge Pollack.
1-23-76	Trial cont'd and concluded. Deft. found guilty as charged on each of cts. 1,2,3 and 4. All defts motions are denied. Pre-sentence report ordered. For sentence 12-22-76 at 10AM. Room 518. Deft. remanded without bail. Pollack,J.
-30-76	Filed deft's notice of motion re: judgment of acquittal notwithstanding the verdict. ret: 12-7-76.
6-76	Filed Govt's affdvt. re: opposition to motion of deft. G. Rosado.
7-76	Filed memo-end. on motion docketed 11-30-76. Motion for acquittal or for a new trial are in all respects denied. Pollack,J. m/n
2-7-76	Pre trial before Pollack, Jr
28-76	Filed Judgment - GUILLERMO ROSADO,JR (atty. Darnell Blackett) Cts. 1-4: Indifinate sentence pursuant to 18:4216,18:5010(b),5017. Pollack,J. issued all copies.
28-76	Filed deft's pre-sentence memorandum.
03-77	Filed deft. Guillermo Rosado,Jr.'s notice of appeal from judgment of 12-28-76. Mailed copies to deft. & U.S. Atty.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____ Deputy Clerk

UNITED STATES COURT OF APPEALS

D. C. Form No. 100 Rev.

JUDGE PULLMAN'S DOCKET

INDICTMENT
(Filed August 29, 1975)
(pp. 3a-9a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA,

-v-

OSVALDO ROSADO, a/k/a
Cano Montijo,
GUILLERMO ROSADO, JR., a/k/a
William Montijo, Jr., and
RUBEN ROSADO, a/k/a
Rubin Montijo,

Defendants.

- -x

COUNT ONE

The Grand Jury charges:

1. From on or about the 4th day of August, 1975, to on or about the 8th day of August, 1975, in the Southern District of New York, OSVALDO ROSADO, a/k/a Cano Montijo, GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr., and RUBIN ROSADO, a/k/a Rubin Montijo, the defendants, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown to commit certain offenses against the United States to wit to violate Sections 5811, 5812, 5821,

5822, 5861(d), (e) and (f) of Title 26, United States Code.

2. It was part of said conspiracy that OSVALDO ROSADO, a/k/a Cano Montijo, GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr., and RUBIN ROSADO, a/k/a Rubin Montijo, the defendants, would make, receive, possess, and transfer a certain firearm, namely, a .225 Calibre Savage Arms Rifle, Model 340V, Serial Number 183906, with a barrel length of less than 16 inches.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the defendants committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. On or about August 7, 1975, OSVALDO ROSADO, a/k/a Cano Montijo, GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr., and RUBIN ROSADO, a/k/a Rubin Montijo, the defendants, met at 154 South Broadway, Yonkers, New York.

2. On or about August 8, 1975, the defendant OSVALDO ROSADO, a/k/a Cano Montijo, entered Rosner's hardware store on New Main Street, Yonkers, New York.

3. On or about August 8, 1975, at 154 South Broadway, Yonkers, New York, the defendant OSVALDO ROSADO, a/k/a Cano Montijo, handed a .225 Calibre Savage Arms Rifle, Model 340V,

Serial Number 183906, with a barrel length of less than 16 inches to a Special Agent of the Bureau of Alcohol, Tobacco and Firearms acting in an undercover capacity.

4. On or about August 8, 1975, at 154 South Broadway, Yonkers, New York, the defendant GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr., received $150.00 in cash in payment for the firearms described in Overt Act Number "3" of this Indictment.

5. On or about August 8, 1975, in front of 154 South Broadway, Yonkers, New York, the defendant OSVALDO ROSADO, a/k/a Cano Montijo, accepted $20.00 in cash for arranging the sale of the firearms described in Overt Act Number "3" of this Indictment.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

1. On or about the 7th day of August, 1975, in the Southern District of New York, OSVALDO ROSADO, a/k/a Cano Montijo, GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr., and RUBIN ROSADO, a/k/a Rubin Montijo, the defendants, did unlawfully, wilfully and knowingly make and alter a firearm, namely, a .225 Calibre Savage Arms Rifle, Model 340V, Serial

Number 183906, with a barrel length of less than 16 inches.

2. The making and altering of said firearms was in violation of Title 26, United States Code, Section 5822 in that defendants (a) had not filed a written application with the Secretary of the Treasury or his delegate to make and register the firearms and (b) had not obtained the approval of the Secretary of the Treasury or his delegate to make and register the firearm, and in violation of Title 26, United States Code, Section 5821 in that the making tax was not paid.

(Title 26, United States Code, Sections 5821, 5822 and 5861(f) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 8th day of August, 1975, in the Southern District of New York, OSVALDO ROSADO, a/k/a Cano Montijo, GUILLERMO ROSADO, JR., a/k/a William Rosado, Jr., and RUBIN ROSADO, a/k/a Rubin Montijo, the defendants, did unlawfully, wilfully and knowingly receive and possess a firearm, namely, a .225 Calibre Savage Arms Rifle, Model 340V, Serial Number 183906, with a barrel length of less than 16 inches, which was not registered to said defendants

or any one of them in the National Firearms Registration and Transfer Record.

(Title 26, United States Code, Section 5861(d) and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

1. On or about the 8th day of August, 1975, in the Southern District of New York, OSVALDO ROSADO, a/k/a Cano Montijo, GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr., and RUBIN ROSADO, a/k/a Rubin Montijo, the defendants, did unlawfully, wilfully and knowingly transfer a firearm, namely, a .225 Calibre Savage Arms, Rifle, Model 340V, Serial Number 183906, with a barrel length of less than 16 inches.

2. The transfer of said firearm was in violation of Title 26, United States Code, Section 5812, in that defendants (a) had not filed a written application with the Secretary of the Treasury or his delegate for the transfer and registration of the firearm and (b) had not obtained the approval of the Secretary of the Treasury or his delegate of the transfer and registration of the firearm, and in violation of Title 26, United States Code, Section 5811, in that the transfer tax was not paid.

(Title 26, United States Code, Sections 5811, 5812, and 5861(e) and Title 18, United States Code, Section 2.)

s/ STEVEN H. SAUER
FOREMAN

s/ PAUL J. CURRAN
PAUL J. CURRAN
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

OSVALDO ROSADO, a/k/a
Cano Montijo,
GUILLERMO ROSADO, JR., a/k/a
William Montijo, Jr., and
RUBIN ROSADO, a/k/a
Rubin Montijo,

Defendants.

INDICTMENT

75 CR.

(In violation of Title 18, United States Code, Section 371 and Title 26, United States Code, Sections 5861(e), 5861(d) and 5861(f).)

PAUL J. CURRAN

United States Attorney.

A TRUE BILL

Foreman.

FPI—8S—3-10-71—2051—0050

U.S. DISTRICT COURT
FILED
AUG 20 1975

9/4/75 - [illegible] Rosado & William Rosado

over, J

SEP 5 - 1975

Deft OSVALDO ROSADO AUSA Bentley Julius Wasserstein, Esq. present, advised reading & pleads NOT GUILTY. Majistrate fixed $5000.00 BAIL continued Deft REMANDED in lieu of Bail. Case assigned to Judge Pollack.

Werker, J-PO

OCT 23 1975 Osvaldo Rosado (Atty Julius Wasserstein present) (P.O.B. - 6/6/56) - Case called, Set for Trial on Nov. 13, 1975 at 10 A.M. in Room 519, Ref't, Remanded. (M. Birnbaum) (Rptr.)

Pollack, J.

93

12-24-75 Osvaldo Rosado Motion & Affidavit & Filed Notice of Motion returnable Pollack J.

1-28-76 Rosado - Defendant's motion to Suppress denied.

NOV 23 1976 William Rosado (Atty [illegible] Assistant) Before Pollack, J. - Jury Trial Begun

EXCERPTS FROM TRIAL TRANSCRIPT BEFORE HON. MILTON POLLACK, U.S.D.J. ON NOVEMBER 22, 23 AND DECEMBER 23 * * * 28, 1976 (pp. 10a-113a)

J O S E P H K E L L Y, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWLOR:

Q Mr. Kelly, can you tell the members of the jury your occupation.

A I am a special agent with the U. S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms.

Q How long have you been so employed?

A Approximately six years.

Q Where are you assigned?

A White Plains, New York.

Q I direct your attention to August 7, 1975 and ask you if you were on duty on that date.

A Yes, sir.

Q Can you describe to the jury what, if anything, you were doing on that date.

A In the early evening of August 7, 1975 I was working in an undercover capacity in Yonkers, New York and I received information from a confidential informant, Clyde Allen, that as a result of this information I proceeded to the vicinity of 154 South Broadway in Yonkers, New York.

Q May I ask you, did you know this informant,

Clyde Allen?

A Yes, sir.

Q Approximately how long had you known him?

A Approximately six months prior to August.

Q Could you describe your relationship with him, what dealings you had had with him?

A Yes. Clyde Allen was an informant who initiated approximately 12 to 14 other investigations that we had been continuously working on throughout this period in the Yonkers, New York area.

Q Some of those investigations, did they deal with the sale of illegal guns?

A Yes. All of them dealt with either the illegal sale of firearms and/or explosives.

Q From whom had most of those illegal sales been from?

A There was an individual who had made-- unwittingly had made connections for us by the name-- who I knew at that time to be Cano Montijo, but who I now know to be Osvaldo Rosado.

Q Could you please continue with your narrative?

A Yes, sir.

We arrived, myself and Clyde Allen, in my car and parked in front of 154 South Broadway. We were greeted

at this time by Osvaldo Rosado who got into our car and told us that his brother and his cousin were upstairs in his apartment with a rifle and they were waiting to cut it down and to sell it to us.

I told Osvaldo that I had understood the rifle had already been cut down and he replied that they had not cut it down since they did not know whether or not we wanted it and what price we would pay for it.

I told Osvaldo that the most I would pay for the rifle would be $150.

He then told Clyde Allen to come upstairs with him and talk to his brother Willy and his cousin Rubin about the price and see if they would agree to it.

Following this exchange, Clyde Allen and Osvaldo Rosado walked into the building at 154 South Broadway.

Q Let me interrupt you for a second. You knew Osvaldo Rosado prior to this time?

A Yes. At that time I knew him to be Cano Montijo.

Q Do you remember approximately how long

you had known him?

A Approximately five or six months prior to this date.

Q On how many occasions, roughly, had you met him, would you say?

A About 20 to 30 occasions.

Q I cut you off where Mr. Allen had gone upstairs.

A I waited about two or three minutes and Clyde Allen then came back out of the building at 154 South Broadway and got into my car and told me that they had agreed to the price of $150 for the gun and they were upstairs now cutting it down.

We waited about five minutes and I decided that we would go upstairs to find out what the delay was for the gun myself and Clyde Allen then went into 154 South Broadway, we walked up to the second floor, knocked on the door and was led into an apartment by Osvaldo Rosado.

The room we went into was a bedroom area and once inside, Osvaldo introduced me to his brother Willy and to his cousin Rubin.

Inside the apartment, Willy was in the process of cutting the barrel off a 25-calibre Savage rifle with

a hacksaw blade. They explained that the blade was very dull and they were having a tough time and Willy, who I now know to be Guillermo Rosado, proceeded to cut the barrel.

He got tired and then he asked Rubin to take over for him. Rubin took over the hacksaw blade and also started to cut the barrel. When he got tired, Osvaldo took over the cutting chore.

After waiting maybe five or ten minutes, the barrel was only three-quarters of the way through and the blade appeared to me to be getting duller. I had an appointment scheduled for that evening with another individual and I was late as it was, and I told the people in the apartment that I was late for this appointment and that I had to leave, but that I would be back the following day and that they should have the rifle ready and at that time I would buy it.

I made arrangements to pick up Osvaldo Rosado at 4:30 the following day, that is August 8, outside of work and I told him to see that the gun be ready then.

Q May I interrupt you one second. You stated that when you went into the apartment, you stated you saw Guillermo Rosado cutting the barrel with the hacksaw blade.

I ask you to look around the courtroom and tell me if you see that person that you saw cutting that blade.

A Yes, sir. He is the individual at the defense table with the white tie and the brown shirt on.

MR. LAWLOR: May the record reflect so.

MR. BLACKETT: Would you stand up, please, Mr. Rosado.

MR. LAWLOR: May the record reflect that the agent has identified the defendant?

THE COURT: Right.

Q May I ask you if you can describe the room in which the defendant and the others were cutting the barrel.

A Yes, sir. As I said, it was a bedroom and it was approximately six by 12 or 14 foot in diameter.

Q How far were you from the defendant?

A A foot or two.

Q Is there any doubt in your mind that it was the defendant that was sawing that barrel?

A None whatsoever, sir.

Q Do you remember for approximately how long he was sawing at the barrel?

A Two or three minutes, I would say.

Q Could you describe what happened after you had

left the apartment? What was the next thing that occurred?

A The following day, August 8, 1975, myself and Clyde Allen met Osvaldo Rosado outside a factory where he worked on Riverdale Avenue in Yonkers, New York and he got into the car I was driving. He told us to take him to his home at 154 South Broadway and on the way he told us to stop at Rosner's hardware store on New Main Street on Yonkers Avenue.

I drove to the parking lot of Rosner's hardware store and at this time Osvaldo Rosado got out of the car, went into the hardware store, came back with a hacksaw blade.

He got back into my car and then I proceeded to 154 South Broadway.

When I arrived there, Osvaldo Rosado got out of the car and went into 154 South Broadway.

We waited about five minutes,that is, myself and Clyde Allen and again I told him, "Let's go up and see what is happening."

We went up to the same apartment that we had been in the previous evening, knocked on the door and was again led in by Osvaldo Rosado.

When I entered the apartment I observed Guillermo

Rosado inside the bedroom area and at this time the weapon that had been attempted--or the weapon that they had worked on the previous evening was now completely sawed down; that is, the barrel was sawed and also the stock was sawed.

I looked the gun over--it was handed to me by Osvaldo Rosado--along with a clip and three 225-calibre rounds of ammunition. I told him the gun looked okay to me and I asked Osvaldo who I should pay and he said, "Give the money to Willy." I then paid Guillermo Rosado $150. I asked Osvaldo if he had something I could put the gun in because I didn't want to be seen with it as I left the building. He found a paper bag and we stuck the gun inside the paper bag and at this time myself, Clyde Allen and Osvaldo Rosado left the apartment and went back to my car.

Q Let me interrupt you if I might for one second.

Let me ask you if you recognize this. That is, Government's Exhibit 1 for identification.

A Yes, sir, I do.

Q I also ask you to take a look at Government's Exhibit 1A, 1B and 1C for identification.

A Yes, sir.

Rosado and it says the same thing that I just read to you.

Government's Exhibit 22 refers to Cano Rosado, Cano Montijo, and it says exactly the same thing.

I have an additional duplicate for Guillermo Rosado, Jr., that is, Government's Exhibit 25.

Government's Exhibit 23 refers to Rubin Rosado, who is the cousin I heard described before, and we have one for Rubin Montijo.

BY MR. LAWLOR:

Q Let me ask you one further thing.

Would you tell the jury what the serial number of this weapon is?

A 183906.

Q That also is the serial number I read from these documents.

After purchasing the gun and having it put in a bag, can you continue with your narrative?

A Yes, sir. Myself, Clyde Allen and Osvaldo Rosado left the apartment and went down to my car which was parked in front of 154 South Broadway.

I opened the trunk and placed the gun inside the trunk, closed it and the three of us then got into my car.

At this time I paid Osvaldo Rosado $20 for setting up the buy, the sum that he had requested he get for arranging this transaction.

He then got out of the car and I departed with Clyde Allen.

Q Did you pay any money to Clyde Allen for the information that he had furnished?

A Yes, sir.

Q Approximately how much was that, do you remember?

A At that time $55 that day.

Q Did you also pay an additional amount to Clyde Allen for the work that he had done for you in connection with previous buys?

A Yes, sir.

Q Do you remember how much that was, approximately?

A In the course of aproximately 14 investigations, at the culmination of these investigations, I think the sum was in the neighborhood of $1500.

Q As a result of what you have just described, did you have occasion to make any arrests?

A Yes, sir.

Q Whom did you arrest?

* * *

CROSS-EXAMINATION BY MR. BLACKETT:

Q Mr. Kelly, to your knowledge, is Mr. Allen, Clyde Allen, paid by the job he does? Is he paid separately for each job?

A Yes, sir.

Q So that his success or his earnings depend upon the success of the work he does?

A That's correct.

Q It does not matter how he does it, does it?

A That's not correct, sir.

Q I believe you said, Mr. Kelly, that you went back to 154 South Broadway on the 8th of August; you were downstairs with Mr. Allen and Mr. Osvaldo Rosado went upstairs, he was up there five minutes or so and then you and Mr. Allen went upstairs and the gun had been cut completely through. Is that correct?

A Yes, sir.

Q The night before, some eight or ten minutes or more you were there and they were sawing away or the gun was being sawed away at and not more than three-quarters of a gun could be sawed through at that time. Is that correct?

A Yes, it is, sir.

Q With that, as you put it, "dull" hacksaw blade?

A Yes, sir.

Q On the 8th of August, you and Mr. Allen went up to the apartment and you had a conversation with Mr. Osvaldo Rosado, he gave you the gun, put it in the bag, gave you the gun and you, Osvaldo and Mr. Allen left the apartment, is that correct?

A Yes. After I had paid Willy for the gun.

Q At that time you and Mr. Osvaldo and Mr. Allen left the apartment, is that right?

A Yes, sir.

Q He placed the gun, did you say, in a paper bag or was it a gun bag?

A I don't recall, sir.

Q You do not recall?

A No, sir. I just know we wanted to conceal the weapon and I don't remember what exactly it was.

Q And Mr. Osvaldo put that gun down and placed it in the trunk of your car, is that right?

A I took the gun down and placed it in the trunk of my car.

Q Did you testify a little earlier on direct that you were a little afraid or you did not want to be seen or you expressed some words of caution in the handling of the situation in the apartment concerning the gun?

A I expressed a sentiment that I didn't want the gun to be seen. That's why I wanted the bag when I left the apartment.

Q In other words, that was the sentiment or was it a caution on your part?

A It was a caution on my part, I would say.

Q Was the bag large enough to contain that entire Government exhibit--that gun which was marked as an exhibit for the Government?

A Yes, sir.

Q And you do not know whether it was a paper bag or a gun bag?

A I believe it was a paper bag, to the best of my recollection, yes, sir.

Q You said you gave Guillermo some money on the 8th of August 1975 and I believe you testified that you gave him the sum of $150. Will you tell the court and jury the denominations of those bills?

A I don't know, sir.

Q Do you keep notes, Mr. Kelly--

A No, sir.

Q --during the course of your work?

A No, sir.

Q So that what you are telling us is merely from

recollection one year later?

A No, sir. It's the way I work, is that either the same day or the following day if it occurs in the evening, in my notes I write out the report that's submitted to the U.S. Attorney in longhand when the event occurs. When an arrest is made, that report is typed by a secretary from the handwritten report that I submitted, proofread, the typewritten report is forwarded to the U.S. Attorney after I signed it and the handwritten report is kept or destroyed by--destroyed by the secretary, I presume.

Q You never keep notes at all concerning your work?

A Just what I explained to you.

Q Even though you know you have to testify from time to time about your work?

A I go by the typed report as I just explained that goes to the U.S. Attorney. That's my notes.

MR. BLACKETT: May I see Government's Exhibit 1 that was given to defense counsel in connection with the work on the 7 and 8, please. Not what is offered in evidence, but Exhibit 1.

MR. LAWLOR: Your Honor, I believe counsel is referring to Government's Exhibit 35--

THE COURT: If you do not know what he is referring to, ask him. Nothing should be stated on the record before the jury. Do not have any colloquies. On the record that is not necessary. The jury is interested in only evidence, not lawyers' talk.

MR. LAWLOR: He has already been supplied with this information.

MR. BLACKETT: I want to inquire of the witness from this exhibit.

THE COURT: Mr. Blackett, I am not interested in the operations of your mind or any discussions between you and your adversary.

MR. BLACKETT: At this time I ask the Assistant United States Attorney to produce the exhibit that he just showed me.

THE COURT: All right. Show it to him.

Do you have another copy that you can let the Assistant use?

MR. BLACKETT: Yes, but he has another copy.

May I give this to him?

THE COURT: Yes.

Q Mr. Kelly, those are part of your notes made in connection with this case, is it not?

A This is all of my notes.

Q All of your notes?

A Yes.

Q On what day was that note made, do you recall the day?

A The day I had written them or the day it was typed?

Q Both, please.

A Okay. It was handwritten on August 9, 1975. It was typed on August 21, 1975.

Q You read it before you signed it?

A Yes, sir.

Q Did you have difficulty, Mr. Kelly, agreeing on getting Mr. Osvaldo to agree with you concerning the price of $150?

A No, sir.

Q I want to read to you from the second paragraph in your notes. I think it is the third sentence.

MR. LAWLOR: Your Homor, I object. It has not been offered.

THE COURT: Are you offering this in evidence?

MR. BLACKETT: At this time I offer it in evidence.

THE COURT: Is there any objection?

MR. LAWLOR: No objection.

THE COURT: Received.

xxx (Defendant's Exhibit A received in evidence.)

Q "I told Osvaldo Rosado that the most I would pay for the rifle was $150 and with that, Osvaldo Rosado told the confidential informant to come upstairs with him and discuss the price with his brother and cousin. The confidential informant went to Osvaldo Rosado and in short time returned and stated that they had agreed to the price of $150 and were now upstairs cutting down the gun."

When the informant left to go upstairs, you remained downstairs at the car?

A Yes, sir.

Q Where was that car parked?

A In front of or diagonally adjacent to 154 South Broadway.

Q Across the street?

A No, sir.

Q On the same side?

A Yes, sir.

Q Had Osvaldo Rosado ever ridden with you in

that car before?

A Yes, sir.

Q Many times?

A Quite a few.

Q During the course of various transactions in the sale of firearms?

A Yes, sir.

Q About how many times, do you recall? Do you recall the number of transactions Osvaldo Rosado engaged you in concerning the sale of firearms of one form or another?

A Approximately 20 to 30 times, I would say.

Q 20 to 30 times?

A Yes, sir.

Q Over what period of weeks or months did that cover?

A About a six-month period of time.

Q During that six-month period was Guillermo Rosado ever involved in any of those transactions?

A Other than this one here, no, sir.

Q As a matter of fact, until the day you saw him, until the day you allege or testify that you saw him you had not seen Guillermo Rosado before?

A That's correct, sir.

Q The arrest warrant that you spoke about in which some 14 people were arrested, or warrants were issued for some 14 people, that also included Guillermo Rosado, Sr., didn't it?

A Yes, sir.

Q Do you know how old a man he was?

A No, sir.

Q When you obtained the warrant for the arrest of these 14 people, you did use the name Guillermo Rosado, Sr., didn't you?

A Yes, sir. I don't recall, to be honest with you now. I don't remember.

Q There was no question about Guillermo Rosado, Sr., was there?

A I knew who he was, but I am not sure whether I knew at that time what specific name he went by.

Q Mr. Kelly, Defendant's Exhibit A which is in evidence and which you testified constitutes all of your notes. Does that reflect the entire transaction involving Mr. Guillermo Rosado? Have you said everything that has to be said or what was said in those notes?

A Yes, sir. Everything that I felt was of relevance to the transaction and this basically highlights all the key facts and then with this and my memory that's

how I testified.

Q In other words, at this late date you couldn't add to that one line or one word, could you, that would change it in any way?

A Oh, yes, sir.

Q What could you add to it?

A You would have to give me a specific instance and maybe it would change or maybe it wouldn't. I don't want to say it wouldn't or would not, or it would or wouldn't.

Q You testified that you and the informant picked up Osvaldo Rosado on the 8th of August 1975?

A Yes, sir.

Q Do you recall where you picked him up?

A Yes, sir. On Riverdale Avenue. I think the street, the cross-street, was around Ludlow Street. I am not positive about that.

Q That was by pre-arrangement the night before?

A Yes, sir. It was outside the factory where he worked which I knew the location of.

Q And he got into your car and you and Guillermo and Clyde Allen drove somewhere, is that right?

A Myself, Osvaldo and Clyde Allen drove somewhere, yes, sir.

Q Where did you drive to?

A We drove to Rosner's hardware store on New Main Street in Yonkers.

Q Did you and Osvaldo and Clyde Allen go into the store?

A No, sir. Just Osvaldo Rosado.

Q Just Osvaldo?

A Yes, sir.

Q Did you have a conversation with him before he went into the store that day?

A Yes, sir.

Q What was the conversation?

A I asked him if the gun was ready and he said "No," that he had to stop by--he had to go to the hardware store and that it would be ready then.

Q Where did you have that conversation with him?

A When I picked him up I was under the impression we were going directly to 154 South Broadway and once inside the car he told me that he had to stop at Rosner's hardware store before he went to his residence.

Q Hadn't you talked with him about that the night before?

A No, sir.

Q Hadn't you agreed with Osvaldo Rosado the night

before that you would get a better saw, a saw that would be able to cut through that thickness of that gun?

A No, sir. I believed that they were going to continue to work on the gun and complete it that night with the dull saw.

Q You did not talk with him about that the night before?

A Excuse me?

Q You did not talk with him about that the night before?

A No, sir. As I stated before, I was in a hurry and I had to leave or else I would have stayed and waited for them to complete the job.

Q All right, Mr. Kelly. During the course of the sawing away of that rifle, did the informant take a hand at sawing that rifle, Clyde Allen?

A Not to my knowledge, no, sir.

Q Were you asked to take a hand at the sawing of that rifle?

A Not that I can recall, sir, no.

Q You do not recall and you do not recall whether Clyde Allen took a hand in sawing of that rifle?

A I know he did not in my presence.

Q In your presence?

A That's correct.

Q You were not in that room at all the time that Allen was in that room, were you?

A That's correct.

Q How much time did you spend in that room on the 7th of August 1975 with Osvaldo and the others as you testified to earlier?

A About 10 to 15 minutes, sir.

Q 10 to 15 minutes?

A Yes,sir.

Q During that whole time they were sawing away at that rifle, that gun?

A That's correct.

Q Mr. Kelly, nowhere in your notes is there any allusion to conversations with Mr. Guillermo Rosado. You are aware of that, are you not?

A If you say so.

Q Not if I say so, Mr. Kelly. Read your notes.

A I will read it, but I am sure you are correct. Yes, sir, that is correct.

Q Nowhere in that statement is there any reference to a conversation had with Guillermo Rosado, is that correct?

A Yes, sir.

Q You testified before the grand jury, Mr. Kelly, on August 26, 1975. At that time you made no statements to the grand jury concerning conversations had with Guillermo Rosado, did you?

A Yes, sir.

Q All the conversations you had in connection with that gun from the beginning to end you had with Osvaldo Rosado, is that correct?

A That's correct, sir.

Q Do you know where Osvaldo Rosado is today?

A Yes, sir.

Q Where is he?

A He is in jail.

Q Do you know how he got there?

A He pled guilty, I believe, and he was sentenced to jail.

Q To the same indictment under which Guillermo stands charged with that crime, is that right?

THE COURT: That is not right.

Q It is the same indictment, though, isn't it? The indictment for which Osvaldo Rosado is serving time is the one under which he is now standing trial, is that correct?

A I don't know, sir. There were many indictments.

Q Mr. Kelly, when you went to 154 South Broadway you entered a room which you described in your testimony as a bedroom?

A Yes, sir.

Q Were there any more rooms to that apartment other than that bedroom?

A Yes, sir.

Q How many other rooms, to your knowledge?

A Three or four, I believe. Until the time of the arrest I had never been in any other room.

Q But after the arrest you went through all the other rooms, is that right?

A Yes, sir.

Q As a matter of fact, that is where you arrested Guillermo Rosado, Sr., isn't it?

A Yes, sir.

Q Do you know where Guillermo Rosado, Sr. is today?

A No, sir.

Q You know he is not in jail, don't you?

A I don't know that one way or the other, sir.

Q Did you ever have to testify against Guillermo Rosado, Sr.?

A In the grand jury, sir.

Q In the grand jury?

A Yes, sir.

Q You never testified in a trial before a petit jury?

A That's correct.

Q You said the room that you went into and where the action was taking place was a bedroom. Do you know how many bedrooms were in that apartment?

A No, sir.

Q Are you aware or were you aware at the time that the room in which the action was taking place was the bedroom of Guillermo Rosado and Osvaldo Rosado?

A No, sir, I did not know that.

Q Did you inquire?

A No, sir.

Q Did you ever inquire concerning who occupied the several rooms there?

A No, sir.

Q Did you ever have a talk with Guillermo Rosado's mother?

A Yes, sir.

Q When?

A Sometime after the arrest. I don't know the specific date.

Q What was the conversation?

A I told her that I had an arrest warrant for her son Guillermo Rosado, Jr. and I wanted her to tell me where he was.

Q How long was that after the arrest of Guillermo Rosado, Sr.?

A Well, I think I had mentioned that to her on August 19, the day of the original arrest, and then Guillermo Rosado, Sr. was arrested twice.

Q Twice?

A Yes, sir.

Q Can you tell us why it was necessary to arrest him twice?

A I certainly can. He was arrested on August 19 and on the way to jail he had a seizure.

Q A heart attack?

A I don't know that, sir. We took him to the hospital. The following day it was explained to Magistrate Schreiber what had taken place. They worked out an arrangement whereby Guillermo Rosado, Sr. agreed to surrender himself when he was released from the hospital.

Subsequently we learned from the hospital that Guillermo Rosado, Sr. had got up, dressed himself and left

the hospital and he never surrendered himself to the United States Magistrate's office for arraignment. A bench warrant was issued and we went back and arrested him again.

Q Following that arrest you went before the grand jury with his case, is that right?

A Yes, sir.

Q Do you know how much the new hacksaw blade that was purchased at Rosner's cost?

A No, sir.

Q Did you ever talk to Osvaldo Rosado about those blades?

A Not that I can recall, sir, no.

Q Did you see Rubin Rosado that day?

A What day is that, sir?

Q The 8th of August.

A Yes, I did, sir.

Q Where did you see him?

A When I was inside my car outside 154 South Broadway as we were getting ready to leave that afternoon.

Q Did you have a conversation with him?

A Yes, sir.

Q You did talk with him?

A Yes.

Q Do you know where he is today?

A No, sir.

Q Mr. Kelly, if you please, will you describe or indicate the many transactions you had with Guillermo Rosado with respect to firearms or explosives within the six-month period you dealt with him?

A Are you speaking of Osvaldo Rosado?

Q Yes.

A You said "Guillermo."

Q Withdrawn, then.

When did you first meet Osvaldo Rosado and where?

A I don't know, sir. Sometime in the neighborhood of February of March of 1975 in Yonkers, New York.

Q You do not recall the time. Do you recall the circumstances under which you met him?

A There were so many of them that I would have to go back over numerous reports and figure it out.

Q Let me see if I can refresh your memory. Do you recall engaging in a transaction with a fellow by the name of Rodriguez in your car when Osvaldo and someone else came to the car because he recognized Rodriguez in the car?

A I recall a transaction with a Hector.

Q Hector?

A Hector Rodriguez, is that correct?

Q Yes.

A At that time he sold me a sawed-off shotgun in my car.

Q Who sold you a sawed-off shotgun?

A Hector and Osvaldo was with him at that time. You're right, that was the first time I ever saw Osvaldo Rosado.

Q How much was paid for the shotgun at that time?

A About $100. I am not sure.

Q Did you have a fixed price for sawed-off shotguns similar to the one that is in evidence here?

A No, sir.

Q What was the usual arrangement connected with the purchase of a shotgun of the type that is in evidence here during that period that you operated--the six-month period where you operated in the area where so much of the work you testified to had been done?

A Well, there was no pattern to it. However, I do want to point out that not all the arrests we made were unwittingly set up by Osvaldo Rosado. There were

people that we dealt with that he had nothing to do with in that Yonkers group. Quite often it would occur that Osvaldo Rosado, who at that time as I stated before we knew as Cano, would get in touch with Clyde Allen and say that he met a guy who has a sawed-off shotgun, a pipe bomb, something of that nature to sell. Clyde Allen would get in touch with me and ask me if we were interested. I would say yes. Find out who the guy was who was selling it and make sure that whatever he is selling he really had. I didn't want to go off on a wild-goose chase.

Clyde would usually go with Cano, talk to the person who was selling the gun or whatever, call me, tell me who the guy was and that he did see whatever it was that it was alleged that he was selling. I would tell him, well, arrange for me to be introduced to the person at a certain time and a certain date. Clyde would get back to me. "It's arranged." I would arrive there, be introduced and purchase whatever item it was that we were buying.

Q Could you tell us approximately how many transactions, if that is the proper word, or how many of these sales of firearms, shotguns or explosives, whatever, you were responsible for during the course of

the six months?

A How many purchases I had made?

Q Yes.

A Just--

Q Or near purchases. How many transactions were you engaged in, those that fell through and those that did not?

A The ones that Cano or Osvaldo set up?

Q No. The ones that you were in in the six months or that vicinity in which you were dealing with fellows either making explosives or shotguns or whatever?

A There might have been 40 purchases.

Q 40?

A Yes, sir.

Q And those were from different sellers at different times?

A Yes, sir. I don't mean to imply that there were 40 different sellers. I mean, we would purchase on occasion 10 or 12 or five times five different items from a single subject.

Q At different times?

A Different times but the same subject.

MR. BLACKETT: No further questions on this witness.

THE COURT: Anything further, Mr. Lawlor?

MR. LAWLOR: Just a couple of short questions, your Honor.

RE-DIRECT EXAMINATION BY MR. LAWLOR:

Q You testified that on August 7 that you had to leave the Rosado residence, you could not stay until the gun was completed, until the barrel had been completely sawed off.

Can you tell the jury why you had to leave? Why were you in a hurry?

A Yes, sir. We, myself and Clyde Allen, were negotiating with an individual in Yonkers for the purchase of some hand guns. We had made arrangements to meet this individual at about 8:30 in Yonkers. I had gone and met Clyde Allen and this individual. They had gotten into my car and it was at this time that I learned about Osvaldo calling him about the sawed-off rifle and that he had wanted us to stop over that evening.

We drove over there and we dropped our original subject off at a corner and told him we would be back in five or ten minutes.

MR. BLACKETT: May it please the court, I do not think the defendant is responding to the questions.

MR. BUCHWALD: He is the witness.

MR. BLACKETT: I do not think the witness is responding to the question.

THE COURT: He is explaining why he was in a hurry and it seems to me whether he was or he was not in a hurry, he says he was in a hurry. Are you questioning that?

MR. BLACKETT: I think he seems to be talking about a day other than the 7th of August 1975.

THE COURT: I think we have had enough as to why he was in a hurry. What else do you want to know?

Q With regard to Rubin Rosado, I just want to ask you on the 19th was a warrant issued for the arrest of Rubin Rosado?

A I believe the name of John Doe also known a Rubin Montijo at that time.

Q He has not been found, to the best of your knowledge?

A No, sir. We are still looking for him.

THE COURT: All right, you may step down.

(Witness excused)

THE COURT: I think before we take another witness up--do you have a short witness or will it carry into the lunch hour?

MR. LAWLOR: What time would be the lunch hour?

THE COURT: In about ten minutes.

MR. LAWLOR: I would expect it would take longer than 10 minutes.

THE COURT: Ladies and gentlemen, we will recess now and we will resume at two o'clock. Please keep an open mind on this case and do not discuss it among yourselves until you have heard all of the evidence in the case.

You may now go out.

(Jury not present)

THE COURT: We will stand in recess now until two o'clock.

(Luncheon recess)

* * *

AFTERNOON SESSION

2:00 p.m.

(In open court, jury present)

THE COURT: All right, Mr. Lawlor, call your witness.

MR. LAWLOR: Your Honor, at this time the Government would like to introduce Government's Exhibit 27 for identification, the stipulation.

MR. BLACKETT: No objection.

THE COURT: Received without objection.

xxx (Government's Exhibit 27 was received in evidence.)

MR. LAWLOR: If I might, I would like to read this stipulation to the jury.

THE COURT: Yes.

(Government's Exhibit 27 in evidence read)

MR. LAWLOR: The Government will call Mr. Clyde Allen.

C L Y D E A L L E N, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWLOR:

Q Mr. Allen, can you please tell the jury your occupation?

A I am a general contractor.

Q How old are you, Mr. Allen?

A Twenty-three years old.

Q How much education have you had?

A Eleven years.

Q In August of 1975, where did you live?

A In Yonkers, New York.

Q How long had you lived in Yonkers?

A For about three-and-a-half years.

Q Had you been arrested while you were living in Yonkers?

A Yes.

Q When was that?

A August 29, 1974.

Q What were the charges against you?

A Attempted murder, possession of a firearm and possession of marijuana.

Q What was the disposition of those charges?

A The attempted murder and the possession of the firearm was dismissed, the charges, and I was convicted of possession of marijuana.

Q What was your sentence?

A My sentence was two years 10 months' probation.

Q Pardon me?

A Two years 10 months' probation.

Q When were you sentenced?

A February 12, 1975.

Q So you are still on probation?

A Yes.

Q Have you received any promises from the Government for the testimony that you provided today?

A No.

Q Do you know Agent Joe Kelly?

A Yes.

Q When did you first meet Agent Kelly?

A About the end of February of 1975.

Q You know what he does?

A Yes.

Q What does he do?

A He is an agent with the Alcohol, Tobacco and Firearms.

Q Did you ever work with him?

A Yes.

Q During what period of time did you work with him?

A From February of 1975 until now.

Q I direct your attention to August 7, 1975 and I ask you whether you were working with Agent Kelly

at that time?

A Yes.

Q I am going to ask you to speak up, please, and speak very slowly so that the jury can hear you and understand you.

Would you tell the ladies and gentlemen of the jury what happened on August 7, 1975?

A That evening I received a phone call from Cano--I am speaking of Osvald. I received a telephone call telling me--he told me that his brother had a rifle that he wanted to sell. I asked him what kind of rifle was it and he said it was a 3030 and asked me to call my friend Joe to see if he wanted to buy the rifle.

Q Why did Cano, or Osvaldo, why did he call you?

A We did deals before with Cano and he knew Joe bought guns.

Q So you had acted before in buying guns?

A Yes.

Q For how long had you known Cano?

A For about six months at the time.

Q Approximately how many occasions had you and Agent Kelly had transactions with Cano? Roughly.

A With myself, about eight.

Q Returning back to your story on August 7, after

you received the call what did you do?

A I told him that I would call him back. I called Joe Kelly and he told me to tell him that we would be over there at six o'clock, that he would look at the rifle and maybe he would buy it.

I called Cano back. I spoke to Cano first and I also spoke to Willy and Willy said that he would sell the rifle for $150, what Joe had told me to tell him.

Q How did you know you were speaking to Willy?

A I asked to speak to Willy. After I was talking to Cano I asked to speak to Willy.

Q When you referred to "Willy," to whom were you referring?

A Cano's brother.

Q For how long had you known Willy?

A For about three months.

Q Would you continue, please.

A Well, I told Willy about the price of the gun that this guy would pay and I told him that we would be by about six o'clock.

Agent Kelly picked me up at my apartment and we drove to South Broadway. I went upstairs, knocked on the apartment door. Cano's mother let me into the apartment. I went through the apartment to the back room

where they were sawing the rifle and when I walked in the room, Cano was sawing the rifle and they had the stock of the rifle sawed off.

Q Was there anyone else in the room?

A Two other people, Willy and the cousin, Rubin.

Q Do you see in the courtroom now the person that you referred to as "Willy"?

A Yes.

Q Could you point him out, please.

A He is right there (indicating).

Q Would you describe him?

A He has the white tie on with the black shirt and the white plaid jacket.

MR. LAWLOR: Let the record indicate that the witness is pointing to the defendant.

Q On how many previous occasions would you estimate that you had met Guillermo Rosado, whom you referred to as "Willy"?

A We had talked about eight or nine times. We saw each other about eight or nine times during August 7 and 8.

Q Where did Rosado live?

A He was staying at 45 Parkhill Avenue, Apartment 42.

Q Had you ever been to his house?

A Yes.

Q Had you ever been to his house?

A Yes.

Q Had Willy ever been involved in any firearms transactions which you had had with Agent Kelly--excluding this incident on August 7 and 8, had you ever been involved with him before?

A No.

Q I interrupted you when you said you were in the apartment and you said you saw the gun being sawed down by Cano. Then what happened?

A Then the hacksaw blade was dull and they were sawing the barrel and they were taking turns, the three of them were taking turns sawing the rifle trying to saw the barrel off and at that time I went downstairs to get Joe Kelly.

We came back to the apartment, we walked through the back door to the bedroom and we were in the room for about five or six minutes and they were still sawing the rifle, the three of them.

Q Did they finish sawing the rifle?

A No. The hacksaw blade was dull and we were going someplace else, so Joe told them that if they had

the rifle finished by the next day, that he would be by and pick it up.

Cano told Joe to pick him up at work and he would buy a hacksaw blade, whatever, and he would saw the rifle off at four o'clock.

The following day we picked Cano up from work at four o'clock, drove Cano from Riverdale Avenue, Yonkers to New Main Street. We went into the hardware store, bought a hacksaw blade and we drove Cano from New Main Street to South Broadway, 154.

Cano went into the apartment and I don't remember if I went in with him, but we were all in the apartment together after that, the three of us, Joe Kelly, Cano and myself, and the rifle was already sawed off when we got there.

Q Okay, let me interrupt you for a second and ask you if you recognize this, Government Exhibit No. 1.

Do you recognize that?

A Yes.

Q Did you see that on August 8?

A Yes.

Q Was this the gun that was being sawed down?

A Yes.

Q Was there anything else with the gun?

A Three bullets and the clip.

Q You saw the gun, you saw that it had been sawed down and then what happened?

A At that time Joe Kelly paid Willy $150 for the gun. The gun was put into a guncase and the guncase was put into a brown paper bag.

Q Did Willy also have the gun?

A Willy had the gun when we went upstairs.

Q Whom did the agent pay money to?

A Willy. At that time they were talking about the sale of a .32 revolver.

MR. BLACKETT: I did not get you.

THE WITNESS: A .32 revolver.

A At that time the conversation--could I finish?

MR. LAWLOR: Would you like the record read back?

MR. BLACKETT: Yes. Yes, I would.

THE COURT: Read the record back, please.

(Record read)

Q The gun has been put in a brown paper bag, the money has been paid.

A Before we left ,Willy was asking Joe if he wanted to buy a .32 revolver. Joe asked him, "How much?" and he said, "$150." Joe said that he would have to see

the gun. Willy said he couldn't get the gun at the time because his wife was at home and he couldn't get the gun out of the house. So we left, the three of us, Joe Kelly, Cano and myself and went into the hallway. Joe Kelly gave Cano some money and the two of us got into the car and drove away.

Q Agent Kelly and yourself?

A Yes.

Q Did you continue to live in Yonkers?

A Until August 19.

Q Am I correct that on August 19 the people who had participated in illegal gun sales with you were arrested?

A Yes.

Q Is that the reason that you left Yonkers?

A Yes.

Q Did you get paid by Agent Kelly for the information for assisting him in this particular matter?

A Yes.

Q Do you remember how much you got paid?

A I was paid about $50.

Q Did you also get paid for the other assistance you had provided him prior to this time?

A Yes.

* * *

THE COURT: Mr. Blackett.

CROSS-EXAMINATION

BY MR. BLACKETT:

Q Mr. Allen, you are a paid informer, aren't you?

A Yes.

Q A professional paid informer?

A I wouldn't consider myself as a professional, but I am an informant.

Q At $10,000 a year, you wouldn't be a professional?

A I wouldn't consider myself as a professional.

Q Do you know what a paid professional informer is?

A Yes.

Q Do you know any paid professional informants that make more than $10,000 a year?

A Yes.

MR. LAWLOR: Objection. These questions are argumentative.

THE COURT: They have been answered so far. Go ahead.

Q Mr. Allen, did I understand you to say that Willy was talking to Joe Kelly concerning future sales in that bedroom?

A Yes.

Q What did he say to him about future sales?

A He said he had a .32 revolver that he wanted to sell.

Q What else? Tell us what did both parties say. What did Joe say to Willy and what did Willy say to Joe?

A Willy was the who brought up the conversation about the sale of a .32.

Q Tell us the whole thing, please.

A After Willy was paid for the rifle, the $150 for the rifle, before we left, Willy asked Joe if he wanted to buy a .32 revolver. He said he wanted $150 for the revolver.

Q A .32 revolver?

A A .32 revolver.

Q Was any work to be done to that revolver?

A No.

Q Tell us what did Joe say to that.

A He asked him where was the gun. He wanted to see the gun before he paid $150 for the gun.

Q That conversation took place in the bedroom where the other gun had been worked on, is that right?

A Yes.

Q And then what happened?

A Well, Willy said he couldn't get the pistol because his wife was at home and he didn't want his wife to know anything about it, so he couldn't get it at that time.

Q He said all of that to Joe Kelly?

A Yes.

Q Mr. Allen, I believe you said that you had known Willy quite a little while before this 7th of August, did you say that?

A For about three months at that time.

Q Three months before?

A I said about three months.

Q About three months before, is that right?

A Yes.

Q Did you know him or did you know of him?

A I knew him.

Q You knew him?

A Yes.

Q Did he know you?

A Only as "Clyde."

Q I beg your pardon?

A Only as "Clyde."

Q Only as "Clyde," but he knew you?

A Yes.

Q He talked to you from time to time?

A Every time I saw him.

Q Every time you saw him?

A Yes.

Q What were the occasions for your seeing him?

A Sometime I would be on the streets and he would walk up and we would start talking.

Q Did he know that you were in the gun and explosive business?

A Only the guns.

Q Only the guns?

A Yes.

Q He knew you were in that business?

A Yes.

Q He did not call you and ask you whether you would be interested in getting a gun to be sold for him, did he?

A He didn't have my phone number.

Q Did you have his?

A I had his brother's phone number.

Q And where was thatphone located, to your knowledge?

A 154 South Broadway.

Q Did Willy live there at that time?

A He wasn't staying there.

Q I beg your pardon?

A He was staying at 45 Park Hill Avenue.

Q When did he stay there?

A Ever since I knew him.

Q Did you ever know him to live at 154 Broadway?

A No.

Q You have never known him to live there?

A No.

Q Did you know any other members of Willy's family besides Willy?

A I know his mother when I see her.

Q Do you see his mother in the courtroom?

A She is sitting back in the back.

Q She is sitting in the back?

A Yes.

Q How did you come to know his mother?

A Through Cano. He introduced me to his mother.

Q When?

A I don't know the exact date, but I was introduced to his mother at the apartment.

Q At the apartment?

A At the apartment.

Q You are saying that you had been there before the 7th of--

A Quite a few times.

Q Before then, right?

A Quite a few times.

MR. BLACKETT: May I have Defendant's Exhibit A in evidence, please.

Q Was there any hassle between Joe Kelly and Osvaldo Rosado concerning the price of that rifle that was being cut down? Was there any question as to whether the price was too much, too little, it should be more, it should be less?

A There was a question about it. Willy said that he wanted $250 for the rifle.

Q When did Willy say that?

A Willy told me that.

Q When did Willy tell you that?

A The night that we went over there when they were sawing the rifle off.

Q "The night"? Which night was that?

A 7th of August.

Q Did you tell that to Joe Kelly when he went downstairs?

A I told Joe Kelly that when I called him before

* * *

A Yes.

Q You were arrested on the 10th of May 1971, is that right, for burglary?

A Yes.

Q And you were convicted for burglary?

A Yes.

Q Mr. Allen, how are you paid in your work as an informer, will you please tell the jury?

A By the case.

Q By the case, is that right?

A Yes.

Q How much are you paid per case?

A It ranges anywhere--

Q Say that again, please?

A It all depends on what kind of case it is.

Q On a drug case, how much would you be paid?

A A drug case?

Q Yes.

A Well, you got to be more clear about what you are asking me.

Q Say that again, please?

A On arrest or buy or whatever? What are you talking about?

Q Would you explain to us the different kinds of

cases you handle as a paid informant? Tell us about some of the cases you handled as a paid informant, please.

A If I am with an undercover guy, if I am with an undercover cop, I am paid by the buy. If I am with just a street cop and an arrest is made, I am paid for the arrest.

Q Say that again?

A I am paid for the arrest.

Q In other words, each particular action of your work is priced separately, isn't it?

A Yes.

Q If you merely point out or tell an agent about particular wrongdoings in violation of the law, you get paid for that?

A Not by just pointing him out.

Q When you cause an arrest to be made, you are paid for that?

A Yes.

Q If you cause an arrest to be made and the case is subsequently dismissed against the person whom you cause your arrest to be made, do you return that money?

A No.

Q In other words, they only get one bite at the apple, is that what you are saying?

MR. LAWLORD: Objection, your Honor.

THE COURT: Sustained.

Q But you are paid to see that people are arrested, is that right?

A Not to see that people are arrested, only the wrongdoers.

Q To help them get arrested, is that right?

A I wouldn't call it helping them get arrested.

Q Mr. Allen, on the 7th day of August 1976, when you went to the house with Joe Kelly pursuant to a call from Osvaldo Rosado, you left Joe Kelly downstairs and you went up into the apartment, isn't that right?

A Yes.

Q You returned to Joe and you did not tell him that Guillermo wanted $200 for the rifle, you said the price was okay.

A I told him on the phone that Willy wanted $250 for the rifle. He told me to tell Willy that the most he could pay is $150 for the rifle.

Q Will you read that statement and see if anywhere in there there is a statement with any reference to this price that Willy was supposed to have given? Will you read that statement, please.

MR. LAWLORD: Objection, your Honor. That is

A No.

Q Did you give Osvaldo money to buy a hacksaw?

A No.

Q When you went up with Joe the night, the 7th of August 1975, I believe you testified that you saw Cano sawing away at the rifle, is that right?

A Yes.

Q Did you give Cano a hand in sawing that rifle?

A No.

Q Did you ever at any time give Cano a hand at sawing a rifle that was to be sold to Joe?

A No.

Q Did you ever visit Cano at any apartment other than 154 South Broadway?

A No.

Q No?

A No.

Q Did Cano or Osvaldo Rosado say to you, on the 7th of August after you arrived there at 154 Broadway, to come upstairs and discuss the questionof price with his brother?

A No.

Q You did not say that?

A No.

Q But you said that Cano had told you earlier that the price would be $200?

A Yes.

Q That was before the 7th of August 1975?

A That was on the 7th.

Q On the 7th?

A On the 7th.

Q When and where?

A On the telephone.

Q What time did you call him on the 7th?

A What time did I call him?

Q Yes.

A I don't remember what time I called him. I was at home getting dressed and he called me.

Q He called you?

A He called me.

Q And you do not remember what time you called him?

A I called him back about five minutes after I got done talking to Joe Kelly.

Q You called Guillermo back five minutes after you got done talking to Joseph Kelly?

A I called Cano back and after I got finished talking to Cano I talked to Willy.

Q What day was that?

A That was the 7th of August.

Q What time of day?

A It was in the afternoon.

Q About what time?

A I don't know.

Q Would you care to hazard a guess, an approximate time, possibly?

A No.

Q Was it one o'clock in the afternoon?

A No.

Q Two?

A No.

Q Two o'clock in the afternoon?

A It was in the evening, in the late afternoon.

Q Was it after three o'clock in the afternoon?

A Yes.

Q Was it 3:30 in the afternoon?

A It was later.

Q Four o'clock in the afternoon?

A I would like to explain something.

Q No, just answer the question, please.

A Well, I'm going to answer your question.

Q Was it four o'clock in the afternoon?

A I told you I don't know what time it was. I didn't keep a stopwatch or watch the time or keep any records on this particular conversation that happened. I just know it happened, I called Kelly and then I called him back.

Q Who called you?

A Cano called me.

Q And you then called Cano?

A Yes.

Q When then did you speak to Guillermo?

A About five minutes after I got through speaking to Kelly.

Q After you got through talking to Kelly, then what did you do?

A What did I do?

Q Yes.

A I finished getting dressed and then I called Cano back.

Q And then?

A Then after I got through talking to Cano, I asked him to let me speak to Willy and I asked him what the price of the rifle was and I told him what Kelly had told me and I told him we would be by.

Q Are you aware that you testified earlier that Guillermo does not live or did not live at 154?

A I didn't never seen him living there, but he was

there that night with the rifle. His mother lives there.

Q Was he there when you made the telephone call to Cano?

A Yes. But that don't necessarily--

Q Did you know he was there when you made the telephone call to Cano?

A Did I know he was there?

Q Yes.

A When Cano called me he said his mother was there, he had the rifle.

Q Did you know that Guillermo Rosado was in that apartment when you called Cano as you stated?

A Yes.

Q Please, what time did you make that call? What time did you make the call to Cano?

A I don't know.

Q Do you know what time Cano called you?

A No.

Q Now, let me ask you, and I hope for the last time, Mr. Allen, did Osvaldo Rosado tell you on the 7th of August 1975 to "Come upstairs with me and discuss the price with my brother and cousin"?

A When we arrived at the apartment, I went upstairs--

Q I asked you, did Osvaldo Rosado say that to you on August 7, 1976?

MR. LAWLOR: Objection, your Honor.

THE COURT: The objection is overruled.

A Explain to me what do you mean, did he say come upstairs? On the telephone or when we got to the apartment? What are we talking about? Are we talking about when we got to the apartment or on the telephone?

Q I am going to read it to you again, please, and see if you can understand it.

Did Osvaldo Rosado say to you, on the 7th of August when you and Joe Kelly arrived at the apartment, "Come upstairs with me and discuss or talk about the price with my brother and cousin"?

A When we arrived at the apartment, I went upstairs and knocked on the door.

Q Did he say that to you or not?

A He wasn't outside when we arrived.

Q It does not matter where he was, did he say that to you?

A No.

Q I believe you had testified earlier that you and Joe, on the 8th of August, went into the building and went into a room other than the room where the gun was being

sawed down because you were waiting. Did you say that?

A No.

Q What rooms other than the one in which the gun was being sawed down in that apartment did you go into?

A Did we go into?

Q Yes.

A Kelly and myself when we went to go?

Q You. Just you.

A Me myself?

Q Yes.

A I passed through three other rooms.

Q When?

A When I first went into the apartment.

Q When?

A The night before the gun was sold.

Q That is the 7th of August?

A Yes.

Q You passed through three other rooms?

A When his mother let me in the front door.

Q His mother let you in the front door?

A Yes.

Q When you say "the front door," is that the door nearest the stairs?

A Yes.

* * *

room.

Q You then went to the back room?

A Yes.

Q And then what happened? You went to the back room--

A When I went to the back room, the door was locked and she knocked on the door.

Q Who knocked on the door?

A His mother.

Q Yes?

A And Cano let me in and then they were sawing the rifle.

Q Cano let you in?

A Yes.

Q When did you go through the living room to get to that room that Cano was in?

A When I first went to the apartment on the 7th of August.

Q What time?

A I don't know what time it was.

Q Was Joe Kelly with you?

A He was outside in the car.

Q Had you and Joe Kelly gone to that building together?

A Had we gone to the building together?

Q Yes.

A He drove me to the building, I got out and went to the apartment to see if they had the rifle and to see if Willy was there.

Q That was the first and only time you went there that day, the 7th of August 1976?

A Yes.

Q That day you had not yet seen the gun being sawed, had you?

A Not until I went to the apartment.

Q Not until you went?

A To the apartment. I hadn't seen the gun being sawn.

Q Not until you got into the bedroom where Osvaldo was, is that right?

A Yes.

Q In order to get into that bedroom, you knocked on that door, you got no response, is that right?

A Cano--

Q You got no response when you knocked on that door at first?

A I didn't knock on the door. The bedroom door you are talking about? I didn't knock on the door, his

mother knocked on the door.

Q Did you know what room to go to when you went up those stairs?

A Yes.

Q What room were you going to?

A What room did I go into?

Q Yes. When you went up the stairs to look for Cano, what room was it your intention to go to?

A You mean the apartment or the bedroom where Cano was? I don't know which room Cano was in. I thought they had the rifle already sawed off or whatever and they was just sitting around, but when I asked for Cano I was led to the back room where his bedroom is.

Q Didn't Cano hail you from the window, you and Joe when that car drove up?

A I don't think so. I went straight to the front door.

Q Didn't Cano come downstairs and get you--

A No.

Q And you went back upstairs with Cano, isn't that right?

A No.

Q Then you do dispute Joe Kelly, do you not?

MR. LAWLOR: Objection.

THE COURT: That is not a proper question.

Q Do you recall Cano or Osvaldo Rosado and Joe Kelly talking about the price of the rifle before you went upstairs that day, August 7, 1975?

A Do I recall Kelly and Cano talking about--

Q Was Osvaldo Rosado talking about the price of the rifle--

A I was always called Osvaldo Cano.

Q Don't worry about that, you call him Osvaldo here, that is his name.

Do you recall he and Joseph Kelly talking about the price of the rifle downstairs that day, the 7th of August, 1975? Do you recall that?

A There was no discussion about the price of the rifle downstairs.

Q Was there a talk between Kelly and Rosado concerning the price of the rifle downstairs before you went upstairs with him, or before you went upstairs?

A No.

Q There was none?

A No.

Q Did you have a talk with Osvaldo Rosado downstairs before you went upstairs?

A No.

Q And you do not recall, on the 7th of August, Osvaldo Rosado telling you to go "upstairs with me and discuss the price with my brother," you don't remember that?

A When I arrived up at the apartment, I went upstairs and knocked on the door to ask for Cano.

Q I want to ask you once more, please.

You do not recall, on the 7th of August, 1975, when Osvaldo Rosado and you and Joseph Kelly were in company, Osvaldo Rosado said to you, "Come upstairs with me"--I am using the word "me," on the statement it's "him"--"and discuss the price with my brother," again it's his brother and cousin. "Come upstairs with me and discuss the price." You do not remember that?

A No.

Q How many doors did you try before someone answered a door to talk to you concerning your reason for coming up there?

A I went straight to the apartment. I knew where Cano lived.

Q You knew where Cano lived?

A Yes.

Q You went straight to the apartment?

A Yes.

Q How many apartments are there on that floor?

* * *

A Yes. The second time when I went up with Joe Kelly I went straight to the back where Cano's bedroom door is.

Q Did you have a talk with Osvaldo up there in his apartment before you went downstairs to talk with Kelly?

A Did I have a talk with him?

Q Yes. Did you have a talk with Osvaldo Rosado in his room that night before you went down that night before the second time you came up with Joe Kelly?

A The only thing that was done that night was I was introduced to Rubin and they tried to get me to help them saw the rifle off and I kept putting off, putting off and I said that Cano told me to go get Joe, that they would have the rifle sawed off in a few minutes and I went downstairs and I got Joe and we came up together and we were in the room for about five or six minutes withthe three of them and they were all sawing the rifle, the three of them.

Q You were in that room five or six minutes while they were sawing the rifle?

A With Joe Kelly.

Q Five or six minutes?

A Yes.

Q On the first occasion when you went up, were they sawing the rifle?

A Yes.

Q How long did you remain in that room with them?

A I stayed in the room about 10 minutes with them.

Q The first time?

A Yes.

Q You went up to the apartment on the 8th of August, 1975 with Joseph Kelly and Osvaldo Rosado for the second time, is that right?

A The 8th. After we picked Cano up from work and he got the hackasw blade, as far as I can remember, I think Cano went up first and then Kelly and I went up second, but I am not sure.

Q How soon after Cano went up did you and Joe Kelly go up?

A This thing I am not sure about, but it wasn't long.

Q Was it five minutes?

A I don't think it was that long.

Q Two minutes?

THE COURT: Come, come, Mr. Blackett. Let us go on now.

Q You testified before the grand jury in this case, Mr. Allen?

A No.

Q Did you offer to tesify--

A No.

Q --on behalf of the Government before the grand jury in this case?

A No.

Q After that rifle was placed in a rifle bag, I think you said, and then in a brown paper bag, is that what you said?

A Yes.

Q And then did you take it downstairs?

A No.

Q Who took it downstairs?

A Joe Kelly.

Q What did he do with it?

A He put the gun in the car.

Q Where?

A In the trunk.

Q Was Osvaldo Rosado with you at the time, with you and Joe Kelly at the time?

A Cano came downstairs with us and--

Q I beg your pardon?

A Cano walked downstairs with us and Joe gave him some money in the hallway.

Q Did Joe and Cano and you get into the car?

A I am not sure about that, but I know Joe Kelly took me home.

Q Wasn't there a time on the 8th when you and Joe and Cano were sitting in Joe's car after the gun was brought downstairs?

A I don't remember all the details about who all went in the car after we came out of the apartment, but I think as far as I can remember, Joe and I were the only ones in the car.

Q I cannot hear you.

A I said as far as I can remember the only people in the car were Joe Kelly and I and he drove me home after he paid Cano.

Q Was there any conversation between you and Osvaldo and Joe or either two of you after you arrived downstairs?

A Cano wanted some money for setting up this gun deal, finding another gun for Joe.

Q He wanted some more money?

A Cano wanted money.

Q He wanted more money.

A He wanted more money for what?

Q Right?

A He wanted some money for hisself.

Q Is that right? He wanted money for himself now?

A Yes.

Q Was that money passed to him in the car?

A I think he was paid in the hallway.

Q What was given to him in the hall?

A I am not sure. I think Joe gave him fifteen or twenty dollars.

Q What was the conversation between Joe, if you were there and heard it, or if you were a part of it, between Joe Kelly and Osvaldo Rosado after the three of you arrived downstairs, first before you entered the car and then after you entered the car, if the conversation took place after you entered the car?

A I don't remember any conversation taking place after we were in the car.

Q Was there a conversation outside the car?

A Only about the money.

Q All right, what was said? Tell us what was said by these two people, the conversation that you heard between Joseph Kelly and Osvaldo Rosado.

A I only heard a couple of things that were said.

Q Tell us what you heard.

A Cano was asking for the money.

Q Cano was what?

A When he was asking Joe for the money for setting up that gun deal.

Q What was he asking Joe for?

A Excuse me?

Q What was he asking Joe for?

THE COURT: He just got through telling you, Mr. Blackett. He said he was asking for the money. Listen to the witness' answer.

MR. BLACKETT: I heard that. I want to know what money he was asking him for.

THE COURT: That is a different question. How much money was he asking for, do you know?

THE WITNESS: No, I don't know how much he was asking for. Joe just gave him some money. I think about fifteen or twenty dollars.

Q Was there any conversation between you, Joseph Kelly and Osvaldo Rosado or anybody else downstairs in the car or outside the car?

THE COURT: I think you have been over that already, Mr. Blackett.

MR. BLACKETT: May I ask it just this once,

your Honor?

THE COURT: You may go on to another question.

MR. BLACKETT: I am talking about anybody else other than Osvaldo, Joseph Kelly and Mr. Allen.

Q Was anybody in that car when you came downstairs, Mr. Allen? Was there anybody in that car when you, Joseph and Osvaldo came downstairs?

A No.

Q There was nobody in that far?

A In the car that we came over to the apartment?

Q Right.

A No.

Q Did anybody subsequently come over to that car to try to get in?

A Sir?

Q Did anybody subsequently come over to that car and try to get in while you and Joe and Osvaldo, if he was there, were in the car?

A I don't remember.

Q Did anybody come over to that car at all?

MR. LAWLOR: You Honor, I think this question has been asked and answered. It is repetitious.

THE COURT: He may answer this one once again, if there is anything else you remember about anyone coming

to the car.

THE WITNESS: That I don't remember.

MR. LAWLOR: No further questions.

RE-DIRECT EXAMINATION BY MR. LAWLOR:

Q Mr. Allen, aside fromthe fact that you are on probation, are there any other charges pending against you by the Government?

A No.

Q Does the Government have any hold on you?

A No.

Q Prior to today, has Mr. Blackett had the opportunity to speak to you?

A Yes.

Q And you did talk with him?

A Yes.

MR. LAWLOR: No further questions.

THE COURT: You may step down.

(Witness excused)

THE COURT: Next witness.

Are there any further witnesses?

MR. LAWLOR: Mr. Doyle.

R O B E R T D O Y L E, called as a witness, having been duly sworn, testified as follows:

(Continued on page 112)

* * *

this witness.

THE COURT: Any cross of this witness, Mr. Blackett?

MR. BLACKETT: Just one question, please.

CROSS-EXAMINATION BY MR. BLACKETT:

Q Mr. Doyle, how did you determine that this was the gun you saw on the 8th of August?

A It has Joe Kelly's initials in it and dated--

Q Where?

A Right there, sir.

Q When were those initials placed there?

A On the 8th of August.

Q On the 8th of August?

A Yes.

Q What time of day?

A I believe it was about 5:30, six o'clock at night, sir.

Q What did he use to inscribe his initials on that?

A I believe a knife.

Q A knife?

A Yes, sir.

Q You are saying that is Joe Kelly's initial?

A Yes, sir. It says "J.F.K."

Q What are those marks or inscriptions above?

A That says "8/8/75."

Q He did that in your presence?

A Yes, sir.

Q Where?

A I believe it was in Yonkers, sir. In Yonkers, I believe.

Q In a building or a car?

A I believe it was in the back of his car.

Q In the back of his car?

A In the trunk.

Q Then what did he do with that gun after that?

A I believe he put it back in the trunk.

Q And then when was the next time that you saw the gun?

A November 18, 1976.

Q '75?

A '76.

Q '76, this year?

A Last Thursday.

Q From the date of initialling up until this day, that is the first time you have seen this gun?

A Yes, sir.

MR. BLACKETT: No further questions of this

witness.

THE COURT: Thank you, you may step down.

(Witness excused)

THE COURT: Any further witnesses for the Government?

MR. LAWLOR: No other witnesses at this time.

THE COURT: The Governments rests?

MR. LAWLOR: Yes, your Honor, the Government rests.

THE COURT: The Government rests.

Come up to the side bar.

(At the side bar)

THE COURT: Any motions?

MR. BLACKETT: I am going to make a motion to quit because the Government has failed to make a prima facie case.

THE COURT: Motion denied.

MR. BLACKETT: My first witness is going to be Osvaldo Rosado. He may be my only witness, but I want him up here.

THE COURT: Where is he?

MR. BLACKETT: In prison.

THE COURT: Where is he?

MR. BLACKETT: In prison.

THE COURT: Did you subpoena him?

MR. BLACKETT: No.

May I have a continuance until tomorrow.

THE COURT: Go right ahead.

MR. BLACKETT: I cannot proceed without him.

THE COURT: That is your concern. I will give you a 15-minute postponement, but if you want anybody here you have him here and you arrange for it in advance.

THE COURT: Anything else?

MR. BLACKETT: I am going to put the brother on but I cannot get him here before tomorrow.

THE COURT: There is no reason for this. This is only the beginning of the afternoon.

MR. BLACKETT: Who expected this case to finish in the short time?

THE COURT: It is perfectly apparent that it should.

(In open court)

MR. BLACKETT: I will also need an interpreter for Mrs. Rosado.

THE COURT: Did you arrange for one?

MR. BLACKETT: No, I did not, but I just discovered that she needs an interpreter. I discovered that since I came back here at two o'clock.

THE COURT: You mean this is the first you discovered that she needs an interpreter?

MR. BLACKETT: Yes, your Honor.

THE COURT: Most extraordinary.

We will give you a 10-minute recess. Go down to the clerk's office and try to find somebody. What language does she want interpreted?

MR. BLACKETT: Spanish.

THE COURT: Step up here, Madame.

Do you understand English?

MRS. ROSADO: Not much.

THE COURT: Do you speak English?

MRS. ROSADO: No.

THE COURT: How long have you been in this country?

MRS. ROSADO: Twelve years.

THE COURT: We will take a 10-minute recess, ladies and gentlemen. The jury may go out.

(Jury not present)

THE COURT: Is there anybody that the Government has that can speak Spanish?

MR. BUCHWALD: We can call our office. We often have somebody on standby.

THE COURT: There is no excuse for this kind

of thing, this impromptu brainstorm here about calling somebody who you know might claim that she does not speak English.

MR. BLACKETT: I have just been advised that counsel can call the marshall's office concerning sending Osvaldo up here.

THE COURT: We can do a lot of things, Mr. Blackett, but this case was set for trial over a month ago. You just made up your mind now, it is 3:15, that you want to put some people on the witness stand and in one case you talk about a woman who has been here 12 years and it is quite apparent to me in the absence of the jury she can understand and speak it.

MR. BLACKETT: She does, but she does not understand enough.

THE COURT: You should have had an interpreter here. We are not required to supply you with ideas.

MR. BLACKETT: Your Honor, may I say this, please--

THE COURT: Please. Get ahold of somebody in the clerk's office and see if you can get him up here.

MR. BLACKETT: In all deference to the Court, I only discovered on this fellow's examination that I would need her.

THE COURT: Please. There is nothing on this examination. You were all over the lot in a rondelet of questions that had no rhyme or reason.

MR. BLACKETT: The informant told such outrageous lies, that is the thing that let her in the house. This woman does not even know that man.

THE COURT: An utterly irrelevant, obscure point.

MR. BLACKETT: It is irrelevance in a sense, but the important thing is getting--

THE COURT: Irrelevant in a big sense, in a big sense.

What do you want this man for that you have not subpoenaed?

MR. BLACKETT: Osvaldo Rosado is a man I brought up from Michigan to testify in this case.

THE COURT: Why didn't you subpoena him to come here? Why didn't you get a writ?

MR. BLACKETT: I should have done that, I did not.

THE COURT: You had notice of this trial for a month.

MR. BLACKETT: And I have been preparing until midnight last night.

THE COURT: Please.

MR. BLACKETT: That is right.

THE COURT: You could not have been preparing very hard if you did not realize that you wanted this person.

MR. BLACKETT: I knew I needed him.

THE COURT: That is no way to try a case.

(Recess)

THE COURT: Mr. Blackett, we have gotten somebody who can act as an interpreter here. She is talking to the lady whom you want to call as a witness.

(Jury present)

J A N E T T O R R E S, the interpreter, having been first duly swron by the notary public, interpreted the testimony as follows:

M A R I A R O S A D O, called as a witness, having been duly sworn, testified through the interpreter as follows:

THE CLERK: Your address, please?

THE WITNESS: 154 South Broadway, Yonkers, New York.

DIRECT EXAMINATION BY MR. BLACKETT:

Q Maria, Mrs. Rosado, you are the mother of Guillermo Rosado?

THE WITNESS: (In English) Yes.

Q You also have a son named Osvaldo Rosado?

THE WITNESS: (In English) Yes.

Q Did you ever know Guillermo Rosado to use a name other than Guillermo Rosado, and Osvaldo Rosado--

THE COURT: Other names.

A No.

Q You sat there in the rear of this court and saw a man testifying there before you, who took the stand?

A Which man?

THE COURT: The last witness.

Q The last one that sat on that stand.

A No.

MR. BLACKETT: Does she understand?

THE COURT: She says "no."

THE INTERPRETER: She says "no."

MR. BLACKETT: She says "no"?

THE INTERPRETER: She says she does not remember. She said she was out here. 'I was not here at the point."

Q You were not in the court when the fellow was on the stand testifying?

THE COURT: Mr. Blackett, go ahead with some

affirmative questions. Never mind all of this by-play.

Q Not whether you saw him testify, but did you see any man sitting on that stand other than the man who was up there this morning? A black man?

THE WITNESS: (In English) Yes, I see him.

Q Did you ever see him before today?

THE WITNESS: (In English) No.

A No, I haven't.

Q Did that fellow ever come to your house?

THE WITNESS: (In English) No, sir.

Q Do not answer before you get the question. Did you ever see him in your apartment, Mrs. Rosado?

THE WITNESS: (In English) No, sir.

Q Whom do you live in that apartment with or whom were you living in that apartment with on August 7 and 8, 1975?

THE WITNESS: (In English) With my husband.

Q Who else? Give us the whole family.

THE WITNESS: (In English) My sons.

Q And who else?

A Nobody else.

Q You do not have a daughter?

THE WITNESS: (In English) Oh, yes, two daughters and sons.

Q Were they living there on the 7th and 8th of August last year, 1975?

THE WITNESS: (In English) No. No. My daughters is married. Three son was married and live outside.

THE COURT: Speak up so we can hear you. You can speak English.

A Migdalia Rosado, Raymond Rosado, Osvaldo Rosado, Willy Rosado and Guillermo Rosado, my husband.

THE COURT: They all lived there on Broadway in Yonkers?

THE WITNESS: (In English) Yes.

THE COURT: In this apartment?

THE WITNESS: (In English) Yes, sir.

Q Mrs. Rosado, the man who testified on that stand, that black man you saw sitting up there at one time and who left here, said he was in your house and you let him in.

THE WITNESS: (In English) No. I no see him.

Q He also said he walked through two or your rooms to get to Osvaldo's bedroom after you let him in.

A I don't know. I didn't open the door.

Q Did you know that he was at your house or did you know whether he was at your house?

A No.

Q Did you see the man who testified first this morning, Kelly, Joseph Kelly, did you see him, the fellow who sat up there this morning? You were in court and you sat in the back.

MR. BLACKETT: Whether she saw him, not whether she heard him or understood him.

A Yes, I did see him here in court.

THE COURT: She said she saw him in court, that was not your question.

Did you see thatman, Mr. Kelly, in your apartment?

THE WITNESS: (In English) No, sir.

THE COURT: He never was in your apartment?

THE WITNESS: (In English) Never.

THE COURT: And the other man, the black man, Mr. Allen, was he in your apartment?

THE WITNESS: (In English) I have never seen him.

THE COURT: You have never seen him?

THE WITNESS: (In English) No.

THE COURT: Did you open the door so that either Allen or Kelly came into your apartment to see your son?

THE WITNESS: (In English) No, sir.

THE COURT: Was your son in the apartment when these two men came into your apartment?

THE WITNESS: (In English) I don't know.

THE COURT: You do not know.

Go ahead.

Q Mrs. Rosado, there are two entrances to your apartment, are there not?

A My son has a room and he has an entrance to that room and he has a private room.

Q And there is another entrance to your apartment?

A Yes, but it's locked.

Q Do you not use that entrance to go into your apartment?

A No.

Q How do you get into your apartment, Mrs. Rosado?

A From the front door in the middle of the living room.

Q From the front door in the middle of the living room?

A Yes.

Q Is that the door to Osvaldo's room?

A No.

Q Are you saying that there are three doors to your apartment?

A No. I have two doors only.

Q Two doors only. One to Osvaldo's room and one to another room?

A For the living room.

Q What is that other room?

A For the living room.

Q Where is that room with relation to your bedroom?

A In a straight line, one after another.

Q Whose room is next to Osvaldo's room?

A Next to mine.

Q And whose room is on the other side of your room?

A My daughter's room.

Q Are there times when Osvaldo goes into the house without your knowing?

A Yes, I have always known. No, he has never entered, I have always known.

Q Do you stay up late at night to see what time he comes in evenings every night?

A Yes.

Q Do you know what time he leaves? Do you know

what time he generally leaves the house?

A When he came out of work at 4:30. When he left for work at 4:30.

Q You are not up at that time, are you?

A At four o'clock when I am home.

MR. BLACKETT: No further questions.

THE COURT: Is there any cross-examination?

MR. LAWLOR: Yes, your Honor.

THE COURT: Make it simple.

CROSS-EXAMINATION BY MR. LAWLOR:

Q Did Agent Kelly, the first person who testified here today--

THE COURT: No, do not ask questions like that. Did Agent Kelly what?

Q --come to your apartment after your son Osvaldo was arrested?

A Yes, he did come in to arrest my husband.

Q Have you ever in your life seen the black man who testified here today?

THE WITNESS: (In English) No, sir.

THE COURT: Did you recognize the black man, Mr. Allen?

THE WITNESS: (In English) No, sir, I have never seen him.

Q Was your son Guillermo living with you in your apartment in August of 1975?

A Yes, he was living with me.

Q Was he living with you in July of 1975?

A Yes.

Q Was he living with you in September of 1975?

MR. BLACKETT: I am going to object, your Honor.

A No. Not in September.

Q When did he stop living with you?

A In the middle of August, around there.

Q Where did he move to?

MR. BLACKETT: I am going to object to this.

THE COURT: Overruled.

A He didn't have any job, he didn't have any-place to live, he went to look for a job and then she doesn't know.

THE COURT: Where did he go to live? Where did he sleep?

A I don't know because he looked for a job in Pennsylvania.

Q Did he go to Pennsylvania?

A I guess so because that's where he started out for.

Q Did he ever write to you and tell you where he was?

A No.

Q Did he ever call you?

A No.

Q Did you ever call him?

A No. I didn't know where I was going to call him.

Q When was the next time he contacted you?

A Well, when I knew he was in the prison in Florida.

Q When was that?

A I don't know. I don't remember.

Q What month?

A I don't know either.

Q Was it this year?

A Yes.

Q Was it this past summer?

A Yes.

Q He did not call you or he did not write to you?

A No.

Q You did not write to him for almost a year?

A No.

Q Do you know if he wrote to his brothers or to

your husband?

A I used to ask for him, but nobody knew anything about him.

Q Do you remember the exact date that he left?

A No.

Q Did either Guillermo or Osvaldo often bring people, friends of theirs to the apartment?

A The friends that he brought were usually almost family.

Q Did you also see everyone who went into his bedroom?

A Yes.

Q Do you have a nephew named Rubin Rosado?

A No. I don't know who he is.

Q You do not know who Rubin Rosado is?

A No. I am Rosada Martas.

Q Who is Rosado Mateas?

Did your sons Osvaldo or Guillermo have a friend named Rubin?

A I have never met a friend by that name.

MR. LAWLOR: We have no further questions. your Honor.

THE COURT: All right. Thank you. Steo down.

(Witness excused)

THE COURT: Any other proof, Mr. Blackett?

MR. BLACKETT: Not at this time, your Honor.

THE COURT: The defendant rests?

MR. BLACKETT: No, the defendant does not rest. The defendant requests a continuance until tomorrow morning.

THE COURT: A continuance denied. We have done whatever we could to repair the omission on your part to bring the other person here and we were informed that that person will be here in the next few moments.

Is there any other proof that you have to offer?

MR. BLACKETT: No. The only other witness I wish to call is Osvaldo Rosado. I expect him to be my only other witness.

THE COURT: If you have any other proof this is the time to furnish it.

We will see what we can do. We will give you another 10 minutes to have this other man here.

MR. BLACKETT: I have no other proof but the man.

THE COURT: Please, I do not expect you to do any testifying before this jury.

MR. BLACKETT: Thank you.

THE COURT: We will wait a few moments, ladies and gentlemen. You may go out for about 10 minutes.

(Recess)

(Jury present)

O S V A L D O R O S A D O, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLACKETT:

Q Mr. Rosado, you are a prisoner, are you not?

A Yes, sir.

Q You pleaded guilty to an indictment charging you with violating the law of the United States concerning guns, manufacturing and altering guns, is that right?

A Yes, sir.

Q You have done quite a bit of selling of guns and altering guns, have you not?

A Yes, sir.

Q Do you remember when you first altered a gun?

A I don't remember the date, but I don't remember--

Q What year?

A It was 1975.

Q Was it early in the year? January? February?

A It was, I'd say, around July.

* * *

Q Do you recall approximately how many times you were involved in the transactions concerning the alteration of a gun or the selling of a gun to Joseph Kelly?

A I'd say about nine or ten times.

Q Do you know who Joseph Kelly is?

A I know now.

Q Do you know a fellow named Allen, Clyde Allen?

A Yes.

Q Is he black, white?

A Black.

Q Do you remember or recall the seventh day of August 1975, something occurring concerning you and Allen--

A Yes.

Q --and Joseph Kelly?

A Yes.

Q August 7, 1975.

Did that something have to do with the sale of a gun?

A The sale of a rifle.

Q A rifle.

Did you have occasion on that day to call Clyde Allen?

MR. LAWLOR: Objection, your Honor. Leading

the witness.

THE COURT: Overruled.

Q Did you have occasion on August 7, 1975 to call Clyde Allen?

A Yes.

Q Did you call him concerning the sale of a gun?

A Yes.

Q Can you tell this jury and this court how the conversation went between you and Clyde Allen?

A Well, I called him up and he was there at the place where I called him up and I told him I had a rifle to sell. He said he'd make some arrangements with Joe.

Q When you say "Joe," you mean Joseph Kelly?

A Yes. He came over about 20 minutes later to my house.

Q Clyde Allen?

A Clyde.

Q Did he come alone or did he come in the company of Joseph Kelly?

A He came in the company of Joseph Kelly.

THE COURT: Where was your house?

THE WITNESS: 154 South Broadway.

THE COURT: Was that your mother's house?

THE WITNESS: Yes.

Q That is where you lived?

A Yes.

Q How many bedrooms are there in that apartment?

A Three.

Q Can you tell us at the time you lived there in August of 1975 who occupied the several bedrooms in your mother's apartment?

A First of all, I got two sisters, they sleep in one bedroom. My mother and father sleep in one bedroom, and me and my brother sleep in the other bedroom.

Q Did you invite Mr. Allen and Mr. Kelly up to your bedroom on August 7, 1975?

A I invited Allen, Clyde.

Q You invited Clyde?

A Yes.

Q But you know that Joseph Kelly came with him?

A Yes, sir.

Q What was your purpose or did you have a purpose in inviting Clyde that day, August 7?

A He was supposed to look at the guns to see if he wants to buy.

Q Did you see Clyde Allen and Joseph Kelly coming to your house?

A Yes. Through the window. My room is in the front, in front of the apartment.

Q Did you recognize the car that they came in?

A Yes.

Q Had you ever seen that car before?

A I'd say a couple of times before.

Q Had you ever been in that car before?

A Yes.

Q When you saw the car draw up, pull up to your building, did it park on your side of the street or across the avenue?

A Across the street.

Q Across Broadway?

A Yes. Across the street from my house.

Q What did you do, if anything, at that time?

A I looked out the window, I seen them down there and I went down to the car.

Q Had either men ever been to your mother's house before that day, August 7, 1975?

A No, sir.

Q When you called Joseph Allen, did you tell him how to get to your room or your apartment?

A No. He came up with me.

Q I beg your pardon?

A That's how he found out, he came up with me.

Q When you spoke to him on the phone, did you tell him the number of your apartment?

A Yes.

Q When the car pulled up you went downstairs to meet them?

A Yes.

Q What then did you do and say, if anything?

A I discussed the gun with him, told him to come up and look at it to see if they want to buy it.

Q Did Joseph Kelly say anything at that time?

A Not that I remember.

Q Did you say anything about price at that time, the price of the gun, the cost of it?

A No.

Q Who did you invite upstairs to look at the gun?

A Clyde.

Q Who?

A Clyde.

Q What was the purpose of inviting him upstairs to look at it?

A To discuss the price with him concerning the rifle.

Q Did either Mr. Kelly or Mr. Allen tell you what kind of rifle or gun they were interested in?

A No.

Q No one told you that they were interested in a sawed-off gun?

A I told them through the phone what I had to sell.

Q I beg your pardon?

A I told them through thephone what I had to sell, that it was a rifle, .225 calibre.

Q Did you tell him it was sawed off at that time?

A No.

Q Whom did you talk to over the telephone?

A To Clyde.

Q Did Clyde say what kind of gun they were interested in?

A No.

Q Had you ever done any business with Clyde before--

A Yes.

Q --concerning guns?

A Yes.

Q Would you say that Clyde was the intermediary

or the middleman, or the guy who made the contact with Joe Kelly when you had a gun to sell?

A Yes.

Q Did you ever have a talk with Joe Kelly about guns before the 7th of August?

A Lots of time before.

Q How many?

A Lots of times.

Q Lots of times before?

A Yes.

Q Did Joe Kelly make known to you what kind of guns he was interested in?

A He was interested in all kinds of guns.

Q Did he give any reason for his interest in guns?

A He said he was a gangster.

Q On the 7th of August, you went downstairs to meet Joseph Kelly and Clyde Allen and you invited Clyde Allen upstairs to look at the gun?

A Yes.

Q Was it also to talk about price?

A Yes.

Q When Clyde Allen came up to your bedroom, was there anyone in that room?

A Yes.

Q Who was in that room?

A My brother. I introduced him to the Fed.

Q Was he in the room when Clyde came up, at the time that you and Clyde came up?

A No, I don't remember.

Q You said you introduced him to the Fed. By that, you mean Joseph Kelly?

A Yes.

THE COURT: I thought you said you introduced him to the pair.

THE WITNESS: I introduced him to the Fed.

Q Did you know that Joseph Kelly was a federal agent at the time?

A No, sir.

Q When you introduced your brother to Joseph Kelly, did you at the same time introduce him to Clyde Allen?

A Yes.

Q When you and Clyde Allen arrived upstairs at your room, was there anyone upstairs when you and Clyde arrived?

A No.

Q After you spoke to Clyde Allen--tell us, what

did you tell him and what did he do?

A Well, I told him did he like the rifle. I showed him the rifle and he said he was going downstairs to bring Joe upstairs to look at it.

Q Was it cut?

A No, it wasn't cut.

Q I want to show this and ask you if you recognize this Government's exhibit in evidence. I ask you if you recognize this as the rifle concerning which some work was done by you.

A Yes.

Q Take a look at it.

A This piece here I did myself. This other piece here, me and Clyde did it, half of the barrel.

Q When you say you and Clyde, you do not mean Clyde Allen?

A Yes, the informant.

Q You did this yourself?

A Right.

Q And you and Clyde did that?

A Yes.

Q Did anybody else help you and Clyde do that?

A No.

Q Did you ask anyone else to help you and Clyde

do it?

A No.

Q When did you and Clyde cut that barrel down?

A I don't quite remember. I think it was August 7.

Q Did you complete cutting it down on that day?

A Yes, sir.

Q Did Clyde help you complete cutting it down, cutting it off?

A No.

Q Tell us what happened. Clyde came up to your room with you?

A Right.

Q He left Joe downstairs?

A Right.

Q You and Clyde had a conversation?

A Yes.

Q In your room?

A Yes.

Q In the absence of anyone--

MR. LAWLOR: Objection, your Honor. He is leading the witness.

THE COURT: Yes, do not lead the witness. Let him testify.

Q When you and Clyde had the first conversation in the room after you took him up to your room, having met him in the car with Joseph Kelly, was there anyone else in that room besides you and Clyde?

A Nobody else.

Q You showed him a gun?

A Yes.

Q What did he say and what did you say?

A He said he was going to accept it, but he was just going to pay $150 for the rifle.

Q He said what?

A He said he was just going to pay $150 for the rifle.

Q Did he recognize the fact that it still had not been cut down?

A Yes.

Q Did you do any cutting on the rifle during that time when you and Clyde were there alone?

A No.

Q He went downstairs and he came back up with Joe Kelly?

A Yes, sir.

Q Tell us what happened in the room then.

A Joseph Kelly came and he stood in front of the

door and he said that he was going to pay $150 for the rifle. I took the hacksaw and started cutting the barrel. The hacksaw blade was kind of dull so I asked the informant to help me out since he looked strong. I said, "Since you look strong, why don't you give me a hand?"

He took the hacksaw and he was cutting the barrel, too, because since the hacksaw was getting dull, it was getting worse. The Fed said he had an appointment he had to attend, so they said they had to leave, so we was about halfway, three-quarters of the barrel and they left.

That night I finished cutting off the barrel myself.

Q Then what happened after that?

A Me and the informant and the Fed went down-stairs, I took the rifle, put it in the bag--

Q You are talking about another day now, are you not, or are you talking about the 7th of August?

A No, I am talking about another date.

Q I have not asked you a question about that other date yet.

Before Joseph Kelly and the informant left, did he say anything to you about meeting again?

A Yes.

Q Tell me what he said. Tell the jury what he

said.

A He said he had an appointment he had to attend to, so they left and they said they would be back the next day.

Q Coming back to your house the next day?

A Yes. He told me to have the gun ready when he comes back.

Q In that conversation, did you ask them to meet you somewhere?

A I told them, "Pick me up on Riverdale."

Q Did they know where on Riverdale to pick you up?

A I told them where I worked, so they knew where to stop.

Q Did you arrange for a time that they were to meet you at Riverdale?

A Not that I remember.

Q Did they know what time you got off work?

A Yes.

Q Did they meet you at Riverdale?

A Yes.

Q Riverdale and what street, if you know?

A I do not quite remember.

Q Where were you employed at the time?

A I don't know, since, you know, I started there,

I was working there a couple of months, I don't quite know the name of the company, but I was welding frames for pictures.

Q You were welding frames?

A For pictures, picture frames.

Q They met you there at Riverdale at your place of employment?

A Yes.

Q Was it after you had finished work for the day?

A Yes.

Q And then what happened?

A We got in the car. He was going to drive me to where I live, 154 South Broadway and on the way they stopped in a hardware store on Main Street. We got out of the car, went into the hardware store and Joseph Kelly purchased two blades that comes in a pack.

Q Did you tell him that you wanted blades?

A I didn't quite tell him that because I already had the rifle sawed off, but I might need it for another job.

Q Who paid for those blades?

A Joseph Kelly.

Q Do you recall the price that was paid for the

blades?

A No, I don't quite remember. I wasn't paying any attention.

Q What happened then? What happened there after?

A We got back in the car and Joe drove over to my house, he parked in front of my house, I went upstairs, put the blades away and they came up a couple of minutes later.

Q Tell us, who came up a couple of minutes later?

A Joseph Kelly and the informant.

Q When you said "the informant," you mean Clyde Allen again?

A Yes.

Q Then they came up to the room where you were?

A Yes.

Q Tell us, was there anyone else in the room besides you at the time that Joseph Kelly and the informant came to your room?

A No, sir.

Q Do you recognize this defendant here?

A That's my brother.

Q Who is he?

A My brother.

Q What is his name?

A Guillermo Rosado.

Q Did you ever know him to use the name, any name other than Guillermo?

A No, sir.

Q Did you ever use any name other than Osvaldo Rosado?

A Well, they used to call me in the street by "Cano," that's about it.

Q K-a-n-o, C-a-n-o?

A That's right.

Q Your friends called you that or people who knew you called you that?

A People in the street, my friends.

Q On that day after you had left the hardware store to go with Joseph Kelly and the informant and went to your apartment as you testified, you went upstairs and they came up subsequently, a few minutes later?

A Yes.

Q Was there anyone in that room with you when they came up?

A No.

Q How long did they remain there?

A Well, about 15 minutes.

Q 15 minutes.

Was there ever a time when Guillermo came into that room while you were there with Joseph Kelly and the informant?

A No.

Q On the 8th he didn't come there?

A No.

Q On the 7th he didn't come there?

A He was there.

Q On the 7th?

A Yes.

Q That is the 7th of August, 1975?

A '75.

Q When he came to the room, did he enter the room through your mother's bedroom which is next to yours or did he enter the room from the door leading to your room from the hall?

A Through my mother's bedroom.

Q He came through your mother's bedroom?

A Yes.

Q Tell us what each of you was doing at the time that Guillermo came to your room?

A We was looking at the rifle seeing if they wanted to buy it.

Q Had you been sawing on the rifle?

A Yes.

Q Were you sawing the rifle when he came into the room?

A Yes.

Q What, if anything, was said between you, Joseph Kelly, the informant and Guillermo when he came to your room?

A Well, he stepped in the room and when I seen him I introduced him to the Fed. I said, Joseph Kelly-- I mean, "Joe, this is my brother Guillermo Rosado."

Q Did you introduce him to the informant?

A Yes.

Q How long did he remain in that room?

A Two, three minutes, then he left. He was well dressed. He looked like he was going to a party.

Q Did he take any part in the sawing of that rifle?

A No, sir.

Q Even a little bit?

A Excuse me?

Q Even a little?

A No.

Q What did Joseph Kelly say after Guillermo was

introduced to him? Did he say anything?

A He didn't say anything to them, he just left and we continued our conversation and the things that we were going to do there in the room.

Q And what was that conversation again?

A Talking about the price of the rifle and did he want it, you know. He got to look at it before he buy it.

Q On the 8th day of August, 1975, after Joseph Kelly, the informant and you had gone to your apartment, when they arrived the rifle had been already cut clean, that is, the nozzle had been cut from it?

A That's right.

Q What was said and done at that time? Tell us just what happened.

Q Well, they came up. I had the rifle under my bed, between the bed. I took it out and it was already cut off and in the bag. I showed it to the Fed and said, "Do you want it now?" He said "Yes." Then I took the rifle, put it back in the bag and Joseph Kelly walked down the stairs with the informant and as we was walking down, I stoo in front of the hall, before going out, Joseph Kelly went out and opened the trunk.

Q Who did?

A Joseph Kelly. He took the key, opened the trunk and I looked around and made sure no officers was around and put it in the trunk. He locked the trunk and got in the car.

Q Who got in the car?

A Me, the informant and Joseph Kelly.

Q Was there any money passed between Joseph Kelly, you and Clyde Allen?

A After we was in the car, we discussed a little about, you know, if I had anything else to sell, things like that and he took his wallet out--he was in the front seat and the informant was in the front seat, too, I was in the back alone. He took the wallet out and he started looking for the money, you know, but he was kind of chicken about it. He was hiding it like--you know, I was in the back and he was looking through the wallet like this and I was trying to check out what he was doing. Maybe, I figure--you know, so he took the wallet and took some fifty-dollar bills, some 20's and some 10's and hand it to me and it was $170.

Q What was that $170 for?

A $150 for the rifle and $20 for the sale.

Q $20 for the sale?

A Yes. He usually pay me $20 for when you sell since I was cutting off the rifle, he paid me $20 for that, too.

Q You mean for arranging the sale?

A Yes.

Q Is that what you charged him?

A Yes.

Q When did he give you that money?

A Inside the car.

Q Did he give you any money in the hall?

A No.

Q What was the usual price for selling a rifle?

A $150. That's what he was charging. That's how much he wanted.

Q You got $170 from him?

A Right.

Q You said that's what he was charging?

A Yes.

Q Have you ever charged more than $150 for a rifle?

A Well, usually say a bigger price than that, so he is going to come lower, so I say, let's say, "$200," and he'll say, "Give you--let's say $175 for it," and I said, "All right, that's good," so I'll take that.

Q In other words, you both were cheating on each other?

A Yes.

Q Or bargaining, as the case would be?

A Yes.

Q Did you ever tell Guillermo or have a talk with Guillermo concerning this rifle?

A No.

Q Did you ever have a talk with him concerning any rifle?

A No.

Q Was Guillermo aware that you were in the business of selling guns?

A No, sir.

Q Did Guillermo ever tell you that Allen called at the house for you?

A No.

Q Your testimony is that Guillermo Rosado had no part in the cutting or alteration of that gun, is that your testimony?

A That's right.

Q Did Guillermo share in any part of the $170 that you got for that gun?

A No, sir.

A That's right.

Q Tell me, do you know where your cousin Rubin is right now?

A I don't know such a name.

Q You do not know such a name?

A No.

Q In July, and this was before August, in July 1975 your brother Guillermo was living at 45 Park Hill Road?

A I don't remember.

Q Was he living with Myrna Matos at that time?

A I don't remember.

Q You do not remember.

Do you know who Myrna Matos is?

A Yes.

Q Did he live with her?

A I don't remember.

Q You do not remember whether he ever lived with her?

A No.

Q Did he have a child by her?

A Yes.

Q But you do not remember if they lived together?

A No.

Q You do not remember if they were living together in July of 1975?

A No.

Q They were living together in August of 1975?

A I don't remember.

Q You testified that you know Clyde Allen.

A That's correct.

Q Did Clyde Allen visit you at your home at 154 South Broadway?

A Yes.

Q Was he known by other members of your family?

A No.

Q Just to you?

A That's right.

Q You just testified that you might have told your brother about the sale to the person you now know as Agent Kelly for $170. When did you tell him that?

A A couple of days later.

Q Where did you tell him? Where were you when you told him?

A I don't remember.

Q Do you remember what his reaction was?

Let us go back a second. You do not know anyone by the name of Rubin Rosado?

* * *

A No.

Q You pled guilty to charges involving the sale of guns, haven't you?

A That's right.

Q In this courthouse?

A That's right.

Q You pled guilty to four separate counts, didn't you?

A That's correct.

Q Two of those counts involved the sale of guns to Agent Kelly?

A That's right.

Q You have already stated that at the time you sold the guns to Agent Kelly you did not know he was an undercover agent.

A That's right.

Q In fact, you thought he was a crook who was going to use those guns illegally?

A No, I thought he was a gangster. That he was going to use them for burglaries and bank robberies, things like that.

Q He was going to use the guns illegally?

A That's right.

Q In addition to those two counts, you also pleaded

guilty to conspiracy, didn't you?

A I pleaded guilty to, I think it was, three shotguns and a pen gun.

Q You do not remember whether you pleaded guilty--you pleaded guilty to four counts?

A I pled to the whole indictment.

Q Two of those counts involved substantive charges of sales of guns.

MR. BLACKETT: May it please the court, I do not know whether he understands "substantive charges."

THE COURT: We will find out if he does or he does not. He pleaded guilty to the charges.

At the time you pleaded guilty to the charges, did you say you understood the charges and that you were in fact guilty and explained to the Judge what you had done?

THE WITNESS: I was kind of scared, so I--

THE COURT: I said did you tell the Judge at that time that you were pleading guilty because you were guilty?

THE WITNESS: Yes.

THE COURT: And did you at that time tell the Judge that you were guilty of the charges of conspiracy and three gun sales?

THE WITNESS: I was kind of panicky so--they said they was going to give me 90 years.

THE COURT: In your panic did you tell the truth?

THE WITNESS: That's right.

THE COURT: So you panicked into the truth, is that what it was?

THE WITNESS: That's right.

THE COURT: Part of what you told the Judge was that you pleaded guilty to being a conspirator and conspiring with others to violate the gun laws, is that right?

THE WITNESS: That's right.

THE COURT: Who were the others that were your co-conspirators?

THE WITNESS: There was a lot of others.

THE COURT: Who?

THE WITNESS: There was a mess of dudes that was in the conspiracy.

THE COURT: Was your brother one of those conspirators?

THE WITNESS: No.

THE COURT: Was he charged as one of those conspirators in the count that you pleaded guilty to?

THE WITNESS: No.

THE COURT: Was your father one of those conspirators?

THE WITNESS: Yes.

THE COURT: Was he charged in the conspiracy that you pleaded guilty to?

THE WITNESS: Yes.

THE COURT: You are sure that your brother was not named as a co-conspirator?

THE WITNESS: Not that I remember.

MR. LAWLOR: Your Honor, I would like to show him the indictment and see if that refreshes his recollection.

Q I would like you to take a look at the names on hat indictment.

MR. BLACKETT: I would like to place an objection.

THE COURT: The objection is overruled. Are you showing him 75 Crim. 1086?

MR. LAWLOR: Yes.

THE COURT: Show it to him and look at the first paragraph.

Q Do you see those names? Do you see your name in that indictment?

A Yes.

Q Do you see your brother's name in that indictment?

A Yes.

Q Do you see Rubin Rosado's name in that indictment?

A Yes, I see a name named "Rubin Rosado."

Q Did you plead guilty to that charge, that conspiracy charge?

A I pled guilty to four counts that covered the indictment. That's all I wanted to do.

Q But one of those counts was the conspiracy charge which included those co-conspirators?

A Maybe, I don't remember. I could have got 90 years for that if I would have did a mistake like the way they were saying.

THE COURT: You could have gotten 90 years for what?

THE WITNESS: If the lawyer tell you that you are going to get 90 years if you get convicted on these counts.

THE COURT: Don't you know that the maximum sentence on a count of conspiracy is five years?

THE WITNESS: No, I didn't know that.

* * *

THE COURT: You were sentenced as a youthful offender, weren't you?

THE WITNESS: Yes.

THE COURT: You were not sentenced for 90 years, were you?

THE WITNESS: No.

MR. BLACKETT: May I ask a question?

THE COURT: Please, do not interrupt the cross-examination.

MR. BLACKETT: This is for clarification, your Honor.

THE COURT: I will clarify it later. Do not interrupt the cross-examination.

Anything else?

MR. LAWLOR: Yes.

THE COURT: Make it short.

Q You have stated that you are now serving time in jail as a result of those charges in the indictment that we just spoke of?

A That's right.

Q You know by pretending that you were the only one to be involved in that sale that you cannot get any further time, don't you?

A That's right.

A Yes, I did. I did more sales with other people.

Q Hector, do you remember Hector?

A Yes.

Q Was he one?

A Yes.

Q In other words, this was a regular racket that you were conducting, wasn't it?

A Yes.

Q And there were any number of people, first with one and then with another that you entered into one kind of agreement or another to sell or deal in guns, is that right?

A Yes.

Q During all of those dealings in guns, was Guillermo Rosado ever a part of it?

A No.

MR. BLACKETT: No further questions.

THE COURT: All right, step down.

(Witness excused)

THE COURT: Is there any further proof, Mr. Blackett?

MR. BLACKETT: No further proof, your Honor. At this time the defendant rests.

* * *

lied through his teeth in just about everything that he said.

I would want to know why the defendant went to Florida, or went to Pennsylvania, why he disappeared for a long period of time, what reason was there.

I have nothing further at this time. Thank you very much.

MR. BLACKETT: Ladies and gentlemen of the jury, in my opening statement I asked you to pay attention to the issue in the case and the issues are the matters that you have to decide.

The issues could easily be, and were stated by the attorney for the Government, apparently, to be sawing or cutting a gun, but that is not the issue. That is not really the issue.

Assuming that there was a gun sawing, that is not the issue. The issue here is whether or not the people have established its case beyond a reasonable doubt. How are you going to determine whether they have established their case beyond a reasonable doubt?

Let us start with Joseph Kelly, their principal witness. Here is a man who has been a special agent for some six years. The question was put to him whether or not he had made any notes, and it is a custom of people

going to court to make notes, especially if they do any number of cases because they cannot rely always just on memory, they make notes. They keep those notes as their own personal notes, their own diary. Just as Officer Kelly said, he made no notes and then when I gave him a defendant's exhibit, which I will ask you to read, please, he says yes, that constitutes the sum and substance, all the notes that he did in connection with this case, but he did more than that, he also testified before the grand jury and what he said here is just what he told the grand jury.

Wouldn't you think that a person who is going to pin a crime on someone for the sale of a weapon would take the time, number one, to talk to him and tell him what the sale is all about? In other words, find out if this is the man who is actually purchasing or selling the gun. Wouldn't you think that a man with this kind of experience working for the Government as a special agent would take that time to inquire of the person who was supposed to be selling him a gun, wouldn't he inquire as to and establish the fact that the gun is being sold by this person, not by what somebody else says to him, not by someone else who has been dealing in guns for some six months or two months or three months,

whether he said six months, whether Joseph Kelly said six months he has been dealing in this or Osvaldo said two months, the question is whether or not he should not have taken the time to have inquired and to find out whether Guillermo is truly the person who is selling the gun to him or truly owned the gun and working through his brother to sell it.

You heard the informant mention the fact that he had known Guillermo for a long time. He even talked about--I think he said three months, yet when this particular sale had to be made it was made by a person who was always selling him guns or always involving him in the sale of guns, to Joseph Kelly. He did not say that he talked to Guillermo about this gun. As a matter of fact, the only gun that they are trying to link Guillermo Rosado to is this gun, although there were many sold, and you heard Joseph Kelly testify himself that there were some 14--I think he said that there were some 14 different tranactions, 14 different people with whom he had a number of transactions, but yet Guillermo was a one-shot thing.

You also heard him say that he arrested Guillermo Rosado, Sr., the father of this man, the father of Osvaldo, and that he had a seizure and he had to

rearrest him again, but when I asked him whether or not Guillermo Rosado, Sr. was in jail, no, he wasn't in jail, but he did go before the grand jury and testify just as he did in Guillermo, Jr.'s case. He went before the grand jury and testified, but Guillermo Rosado is walking the street a non-convict and this was the same matter in which he tried to also involve Guillermo Rosado, Sr.

Joseph Kelly stated that when he and the informant left the house or the room of Osvaldo Rosado August 7, 1975, the gun had been cut three-quarters of the way through. In other words, the barrel had been cut three-quarters of the way through. I believe you heard Osvaldo say that when they picked him up on Riverdale they took him to a hardware store where Joseph Kelly bought new blades for the old hacksaw. New blades. He did not have to buy blades because he had already cut the gun through, but he kept the guns. What did he say? "For future use, in case he has to sell more guns, in case he is able to sell more guns."

They picked him up for the purpose of going to the house and getting the gun. That is why they picked him up. When they arrived at the house, two minutes after they arrived there, they had gone up and there was the

gun cut clean through. The nozzle that they had been hacking away the night before and sawing away at was cut off and the gun was ready for delivery.

Now, again, who gave Joseph Kelly the gun? Guillermo? No. Osvaldo Rosado gave Joseph Kelly the gun. Osvaldo Rosado packed the gun in the bag and gave it to Joseph Kelly. He left the building--I think he testified, I am sure he testified that he took the gun down and placed it in the trunk whereupon Joseph Kelly locked the trunk. I think Joseph Kelly also testified to his caution in dealing with the situation at that time and it can be readily understood, I believe, that he would be cautious enough to let Osvaod Rosado take the gun down and place it in the trunk.

You also heard testimony to the fact that the three people who left that building, Rosado's apartment, were Osvaldo, Joseph Kelly and the informant, three people, they went down.

According to Kelly, they got in the car, according to all three, according to the informant two of them got in the car and nowhere is there any testimony about a third person or a fourth person coming to that car. I do not recall any testimony to that effect. Also, if you will notice one Rubin Rosado was mentioned. Who is Rubin

Rosado? He is more than Rubin Rosado, He is also Rubin Montijo. That is on the indictment. There was a dragnet, get everybody that we can collect, give them names. In that dragnet, they collected Rubin--they did not collect Rubin, because they claim they are still looking for him, Rubin Rosado or Rubin Montijo is unknown to Osvaldo Rosado, he is unknown to Maria Rosado. Neither as a cousin or a son is he known to her and he certainly is not known to him as a brother or a cousin according to his own testimony.

Again, if a person is in a room sawing a gun, as Mr. Joseph Kelly stated, cutting away at it, wouldn't you think that a man with Joseph Kelly's experience would have given him some encouragement, said something to him, elicit a conversation? Isn't this the ordinary thing? A man is in there working, getting an instrument ready for me to buy, wouldn't I encourage him--particularly if I saw he was having a particular time cutting through it, I would say to him or I might say to him something like this, well, it's giving you a little trouble and let him say something to me to see whether or not he wants to continue and not talk about whether I have to rush away because the gun might not be there the next day, and if I am interested in making a

sale or a purchase, and an arrest, I wouldn't be running away, I would be there and I would expect that Joseph Kelly has the experience to act the same way had this truly happened as he stated it did.

The Assistant U.S. Attorney said to you--stated whether or not you would believe or should believe Joseph Kelly and whether or not he would lie. All I can tell you, ladies and gentlemen, my experience has been that officers do not consider what they are doing when they make an arrest. This is not something that they consider as wrong, they want to make an arrest. It is better to get everybody and then let the court sift it out and determine who should be held and who should be released. It is out of my hands, let the court decide. Anybody that has a name like or acts a little like that person goes. This is not uncommon at all, it is done all the time.

Now, what about this informant? Here is a man as criminal as they come, robbery and everything else--not robbery and everything else, but robbery among other things. He is presently serving probationary time. He is presently also under, doubtless, a promise that something would be done if he helps do this and helps do that, "I will put in a good word for you when your times comes, but

you first have to appear before the probation board, or what have you, to put in a good word. It will help." But even more than that, the man testified that he made $10,000--I believe he testified that he would make $10,000 in one year, which is not bad for doing the kind of work that he does, and also he got paid according to the job. If he made an arrest, that was money in his pocket. To merely go in and inquire and to investigate meant nothing, he did not make money doing that, his money came when he helped effect an arrest.

Should it really matter to this kind of person that he arrest an innocent person, an innocent man? It should not matter. It was not. It would not. Why should it? He was in this business for money, pure and simple, whatever he can get for whatever arrest he can turn or help turn.

You know, you do not only listen to testimony of witnesses, you also notice or pay attention to their demeanor on the stand as they testify. You had an opportunity to see this man's reaction as he sat there. Did he impress you as being a person who was even faintly trying to be truthful? It is easy to say, "Well, he did not take notes, he is not an officer, he has been relying on memory, but his memory seems to contradict much

of what the--the material parts of what Joseph Kelly had to say in his only written statement, his written and signed statement. There seems to be a tremendous, a material conflict there.

Now, where is the conflict? According to Joseph--and this is in evidence, a copy of it is in evidence, the informant said that he went up to the--in several respects he went up to the bedroom, there was no--he went up there alone, alone. Joseph Kelly says that the informant and Osvaldo Rosado went up the first time. Guillermo--not Guillermo, but Osvaldo and the informant went up the first time and they went up there to talk about price, to look at the gun, to decide after the informant had said, "Look, I am not going to pay any more than $150, all right, you come on up." He took the informer up. He claims they went up there alone, he knocked on the door, Mrs. Rosado first--he knocked there, I think this is what he said, he could not get an answer, he went back into the room and he went through, or he went through, through the bedroom to the bedroom to the Osvaldo room, knocked there, couldn't get an answer and then went out and knocked on the outside door and Osvaldo let him in.

Osvaldo testified that he saw the car come to the house. If I call somebody over or if you call someone

to your house and you live on the second floor, you know the person is coming in a car and they are coming for the first time, or even the second time--let us assume that some of the things--just assume it without conceding, because we do not want to concede anything, wouldn't it be the likely thing--number one, you go downstairs and bring them up, especially if you are doing the wrong thing. You do not want everybody to know. He certainly would not want this informant to go knocking on the door of his mother or anybody else asking for Guillero, "We are looking for a gun." The likely thing would be to go down and bring him up, quietly go into the room, show him the gun, tell him again, "This is what we want by way of price," and I believe Osvaldo testified, "Yes, this is what he did." He went down, brought him up, showed him a gun and according to Joseph Kelly, according to Joseph Kelly, the confidential informant went with Osvaldo Rosado and in a short time returned and stated they had agreed to the price of $150 and were now upstairs cutting down the gun.

"At approximately 9:05 the confidential informant and I decided to go up to Osvaldo Rosado's residence and wait for the gun to be ready. We walked to an apartment on the second floor, knocked at the door and were let into

the bedroom by Osvaldo. If you notice, everything indicating a kind of attitude, it is being pointed out again and again and again by Joseph Kelly, he let him in. He explained that the hacksaw blade was done. This is what--Kelly said Osvaldo let him in and said the hacksaw blade was dull. He talks about, "I watched Rubin take over the cutting of the barrel." Rubin, the mystery man that nobody knows, and nobody seems to be able to bring into court.

You cannot always bring persons into the court who are accused by reason of a dragnet kind of approach to a wrong because you are likely to have the names given to you by people who do not even know him. Who was there? "John Smith." Who was there? "John Doe." They give you any name. They give you the name of Guillermo Rosado, they give you the name of Guillermo Rosado, Jr., Jr. and Sr. These are names. They know him, therefore they must be also implicated. "Let us take them in and let the court determine whether or not they have done anything wrong. It is out of our hands. It is off our hands.

You know how often, after a while, after expressing certainly that he knew what he was talking about, the informant began to waiver towards the end and

he began to tell you, "I don't remember this," and "I don't remember that," and suddenly his memory seemed to fail him, even though the likely thing to do would be to talk to the witness who just left the stand. "What did you tell him? What did they ask you? Expect them to ask you this and expect them to ask you that." This, again, is not uncommon. The witnesses on my side I will talk to, the witnesses on your side you will talk to. To borrow a board, to corroborate, although I don't believe there was true corrobration there at all and if you recall the demeanor of the informant on the stand, much unlike that of the special agent who talked as though he knew what he was talking about, except that he did not say things to actually implicate Guillermo Rosado, to truly implicate him as a person who violated the law under the indictment for which he is being tried or on which he is now being tried.

I now want to point out a couple of more discrepancies between the testimony of the informant and the testimony of Joseph Kelly.

On August 8 at approximately 4:30, the confidential informant and I picked up Osvaldo Rosado. I want to just call your attention to one thing, which if you will recall Osvaldo Rosado testified that he stayed

there and cut that rifle down that same night. It was not necessary for him to buy new cutting blades. He testified that Joseph Kelly bought those blades, gave them to him and he took them for future use. This is a minor point, but I might as well point it out to you. Osvaldo Rosado placed the rifle in the bag and gave it to me and we went outside and I placed the rifle in the trunk of my car and Osvaldo Rosado, the confidential informant and I then got in the car. Osvaldo Rosado said the rifle belonged to his cousin, that is, Rubin, the man that he--the theoretical person that nobody seems to know whether he exists or not and that his brother had told it for his cousin.

Now, this is an entirely different twist. It belonged to his cousin and that his brother had sold it for his cousin. I want you to look at that and you will have a chance to look at also the testimony of the grand jury if you care to have it. His brother sold it for his cousin. First it was Guillermo's gun, now it is a cousin's gun, but the brother is selling it for the cousin.

"At this time, I saw Rubin Rosado." Oh, now Rubin Rosado comes back into the picture. He was not there on the 8th, he was supposed to be there on the 7th,

he was not there on the 8th, but on the 8th he comes back into the picture. "At this time, I saw Rubin Rosado"--this is when they went downstairs and the gun was placed in the trunk--"to bring him back in," to make the story complete. "I saw Rubin Rosado meet Guillermo Rosado, Jr. and I told Osvaldo Rosado to call him over to the car." If you will remember, the informant, even though I questioned him to try to bring this out, he refused to state that anyone--he said that no one came to the car. As a matter of fact, he stated that just two people got into the car, he and Joseph Kelly. He did not even allow for Osvaldo getting in, and further he does not at all--he would not acknowledge that Rubin Rosado came over to the car as Joseph Kelly had stated.

"Rubin Rosado came over to the car and I told him the gun was good and he stated to me that he had a .32-calibre revolver." Now, this is Rubin Rosado, a man not here on trial. Not Guillermo, Rubin Rosado. This is the same person that the informant attempted to say or did say--this is the same conversation, rather, that the informant claimed Joseph Kelly had with Guillermo. "Rubin Rosado came to the car and I told him the gun was good and he stated to me that he ahd a .32-calibre revolver for sale"--that was supposed to be his testimony,

according to the informant"--and would see me next week. You also remember he stated, "I can't do anything because my wife is home," or somebody else, but this was the reason why he could not get this revolver now, but that is not stated in Joseph Kelly's report.

"As Rubin Rosado left, I paid Osvaldo Rosado $20 of official Government funds for arranging the deal."

Now, if you will recall, Osvaldo Rosado testified that he got $170, $150 for the gun and $20 for--in other words, he collected both ways, both as an arranger of a sale and as the seller. Osvaldo Rosado then got out of the car and the confidential informant and I then drove off.

Ladies and gentlemen, every person brought before a court on a criminal case is presumed innocent until proven guilty. They do not have to prove their innocence, they are presumed innocent. They do not have to lift a finger or utter a word to establish their innocence, the Constitution of the United States clothes them with that presumption. It also clothes them with the presumption that doubts should be resolved in their favor. If any, doubts should be resolved in their favor.

Now, I believe that there is more than a carload

* * *

Guillermo who talked about the sale of this revolver, but nobody is on trial now for the sale of a revolver and they both agree, both the informer and Mr. Allen and Agent Kelly both agree as to the details of the sale of this particular weapon, our exhibit, Defendant's Exhibit 1. The defendant's counsel did make one statement that I do want to respond to and that was that Agent Kelly's testimony did not involve Guillermo to any significant degree.

For him to say that it seems to me that we are almost at different trials this past afternoon because we heard Agent Kelly testify that he saw Guillermo Rosado with a hacksaw blade in his hand, sawing down that weapon and that he paid Guillermo Rosado $150 for that weapon, that he handed him $150 for that weapon. It would seem to me that those are very strong indications that Guillermo Rosado was involved in this crime.

We have heard testimony from Osvaldo as to why they were selling this gun. I think that testimony was very, very true and very, very eloquent as to why these individuals sawed down that rifle and why they were selling it. They thought Joe Kelly was a Mafia or a gangster of some type and that he was going to use this weapon in bank robberies and in holdups and who

knows what other illegal deeds--that is precisely what they believed when they sold this weapon. That is why they sold this weapon and that is why the Government has the strict laws that they have against the sawing down of this type of weapon, because it is the type of weapon that can be concealed. it is the type of weapon that can be used in the crimes that happen throughout the city and the country all of the time. It becomes a very, very dangerous weapon. It is not even more accurate after it has been cut down, it is less accurate, but the types of things that a sawed-down weapon is going to be used for are the types of things that are not going to need accuracy because it is going to be used at very, very short range for primarily illegal purposes, so the laws are on the books for very, very important reasons because the crime is a very, very serious one and I think that we all have to be aware of that and you all have to consider that when you are in the jury room deliberating.

THE COURT: Yes, Mr. Blackett?

MR. BLACKETT: I was going to comment.

MR. LAWLOR: That is all.

THE COURT: Ladies and gentlemen, we will recess now until tomorrow morning at ten o'clock, at which time I will give you your instructions on the law to be

* * *

DEFENDANT'S EXHIBIT A - REPORT OF SPECIAL AGENT JOSEPH F. KELLY (pp.114a-117a) 114a

4416-0875-6513W01,02,03
(T-II)

United States
v.
Osvaldo Rosado, a/k/a Cano Montijo; Guillermo Rosado, Jr., a/k/a William Montijo, Jr.; & Rubin Rosado, a/k/a Rubin Montijo

STATEMENT OF

Joseph F. Kelly, Special Agent, Bureau of Alcohol, Tobacco, & Firearms, made at 95 Church Street, White Plains, New York on August 21, 1975.

On August 7, 1975, I received information from a confidential informant that Cano Montijo, who is now known to me as Osvaldo Rosado, had called him and stated that his cousin and brother had a sawed-off .30-30 Cal. rifle for sale illegally. Arrangements were made for the confidential informant and me to meet Osvaldo Rosado, William Montijo Jr., who is now known to me as Guillermo Rosado Jr., and Rubin Montijo, who is now known to me as Rubin Rosado, at Osvaldo Rosado's residence located at 154 South Broadway, Yonkers, New York, at 8:30 P.M., that evening.

On August 7, 1975, at approximately 8:55 P.M., the confidential informant and I arrived at Osvaldo Rosado's residence at 154 South Broadway, Yonkers, New York, and met him. Osvaldo stated that his brother and cousin were upstairs in his (Osvaldo's) house with the rifle and were waiting to cut it down when a price was agreed upon. I told Osvaldo Rosado that I thought the "piece" had already been cut-down, and he replied that they were waiting to see if I wanted it. I told Osvaldo Rosado that the most I would pay for the rifle was $150.00, and with that Osvaldo Rosado told the confidential informant to come upstairs with him and discuss the price with his brother and cousin. The confidential informant went with Osvaldo Rosado and in a short time returned and stated they had agreed to the price of $150.00 and were now upstairs cutting down the gun.

At approximately 9:05 P.M., the confidential informant and I decided to go up to Osvaldo Rosado's residence and wait for the gun to be ready. We walked to an apartment on the second floor, knocked at the door and were let into a bedroom by Osvaldo Rosado. Inside I was introduced to Guillermo Rosado, Jr. and Rubin Rosado. I saw Guillermo Rosado, Jr., in the process of cutting the barrel of a .225 Cal. Savage Arms Rifle, s/n 183906, with a hack-saw and having a difficult time; Osvaldo Rosado explained that the hack-saw blade was dull. I watched Rubin take over cutting the barrel after Guillermo Rosado became tired and in turn was followed by Osvaldo Rosado who took the hack-saw from him to continue the cutting. After approximately ten (10) minutes of combined cutting effort they appeared to be three-quarters of the way through the barrel.

GX 3501C

BEST COPY AVAILABLE

EXHIBIT 1

Because of the dullness of the blade, it looked as if they were not going to be able to complete the job, so I told Osvaldo Rosado that the confidential informant and I were in a hurry since we had an appointment. I told Osvaldo Rosado we would meet him the following day and he was to have the sawed-off gun ready. Osvaldo Rosado agreed and the confidential informant and I departed.

On August 8, 1975, at approximately 4:30 P.M., the confidential informant and I picked Osvaldo Rosado up on Riverdale Avenue, Yonkers, New York, and drove him to his residence; on the way Osvaldo Rosado had us stop at a hardware store where he purchased a new hack-saw blade. As we parked in front of 154 South Broadway, Yonkers, New York, Osvaldo Rosado got out of the car with the hack-saw blade and went upstairs to his apartment. The informant and I waited three or four minutes, then went upstairs to the apartment we had been in the previous evening. Osvaldo let us in and therein with Osvaldo Rosado was his brother Guillermo Rosado, Jr.. As I entered the room I saw that the rifle that they had attempted to cut down the previous evening was now fully cut down (barrel and stock). Osvaldo Rosado showed me the sawed-off rifle a .225 Cal. Savage Arms Model 340V, s/n 183906, and a clip which contained three (3) rounds of .225 Cal. ammunition. After examining the rifle, I paid Guillermo Rosado, Jr., $150.00 of official government funds, as payment for the gun. Osvaldo Rosado placed the rifle in a bag and gave it to me, we went outside and I placed the rifle in the trunk of my car and Osvaldo Rosado, the confidential informant, and I then got in. Osvaldo Rosado said the rifle belonged to his cousin, and that his brother had sold it for his cousin. At this time, I saw Rubin Rosado meet Guillermo Rosado, Jr., and I told Osvaldo Rosado to call him over to the car. Rubin Rosado came to the car and I told him the gun was good and he stated to me that he had a .32 Cal. revolver for sale and would see me next week. As Rubin Rosado left I paid Osvaldo Rosado $20.00 of official government funds for arranging the deal. Osvaldo Rosado then got out of the car and the confidential informant and I drove off.

On August 19, 1975, pursuant to a Federal Arrest Warrant issued in the Southern District of New York, I arrested Osvaldo Rosado at the intersection of New Main Street and South Broadway, Yonkers, New York. I arraigned Osvaldo Rosado before U.S. Magistrate Sol Schreiber, the following day. Osvaldo Rosado was held on $5,000 cash bail.

Special Agent Joseph F. Kelly

EXHIBIT 1

4416-0875-6513M01;02;03
(T-II)

United States
v.
Osvaldo Rosado a/k/a Cano Montijo
Guillermo Rosado Jr. a/k/a William
Montijo Jr., and Rubin Rosado a/k/a
Rubin Montijo

.225 Cal. Savage Arms Sawed-Off Rifle, Model 340V, s/n 183960, barrel length 10 5/8", overall length 21" with three rounds of .225 Cal. ammunition, which is presently stored at the ATF Evidence Room, 95 Church Street, White Plains, New York. To be produced at time of Trial.

EXHIBIT 1a

4416-0875-6513W01,02,03
(T-II)

United States
v.
Osvaldo Rosado, a/k/a Cano Montijo;
Guillermo Rosado, Jr., a/k/a
William Montijo, Jr.; & Rubin Rosado,
a/k/a Rubin Montijo

STATEMENT OF

Robert L. Doyle, Special Agent,
Bureau of Alcohol, Tobacco, & Firearms,
made at 95 Church Street, White Plains,
New York, on August 11, 1975.

On August 8, 1975, at approximately 4:30 P.M., I was in a position adjacent to 154 South Broadway, Yonkers, New York, and I observed Special Agent Kelly drive his vehicle up to and park in front of this building. Within Special Agent Kelly's vehicle was a confidential informant and a man known to me as Cano Montijo a/k/a Osvaldo Rosado. I saw Cano exit the vehicle and enter 154 South Broadway. A short time later Special Agent Kelly and the confidential informant left the vehicle and entered the same building. At approximately 4:50 P.M., I observed Special Agent Kelly, the confidential informant, Cano, and another male exit the building and put a bag into the trunk of Special Agent Kelly's vehicle, and Special Agent Kelly, the confidential informant, and Cano Montijo a/k/a Osvaldo Rosado entered Special Agent Kelly's vehicle.

At approximately 5:00 P.M., Cano exited Special Agent Kelly's vehicle and Special Agent Kelly and the confidential informant drove off. I followed Special Agent Kelly's vehicle and a short distance away Special Agent Kelly showed me a sawed-off rifle, Savage Arms, model 340V, .225 Caliber, serial number 183906 within a bag in the trunk and a clip containing three (3) rounds of ammunition for the firearm, all of which Special Agent Kelly stated that he had purchased from Cano Montijo a/k/a Osvaldo Rosado.

Special Agent Robert L. Doyle

EXHIBIT 9

DEFENDANT'S REQUEST FOR CHARGE
(Filed January 18, 1976) (pp. 118a-123a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

- v - : 75 Cr. 878

GUILLERMO ROSADO, JR, a/k/a "William Montijo, Jr.," :

Defendant. :

DEFENDANT'S REQUESTS TO CHARGE

GUILLERMO ROSADO, JR., the defendant respectfully requests the Court to include the following in its charge to the jury:

The Indictment

The indictment in this case contains four counts. Count One as it applies to defendant GUILLERMO ROSADO, JR., charges that from approximately August 7th, 1975 to approximately August 8th, 1975 the defendant GUILLERMO ROSADO, JR., a/k/a "William Montijo, Jr.," conspired with Osvaldo Rosado, a/k/a "Cano Montijo," and Rubin Rosado, a/k/a "Rubin Montijo" to violate the Federal Gun Control Act of 1968. Count Two charges that on about August 7th, 1975 the defendant knowingly made and altered a firearm or aided or abetted others in making or altering a firearm and the making or altering of this firearm was illegal in that the applicable tax was not paid, the defendant had not filed a written application with the Secretary of the Treasury or his delegate to make and register the firearm, and the defendant had not obtained the approval of the Secretary of the Treasury or his delegate to make and register the firearm. Count Three charges that on about August 8th, 1975 the defendant received and possessed or aided or abetted others in possessing a firearm which was not registered to him in the National Firearms Registration and Transfer Record. Count Four charges

that on about August 8th, 1975 the defendant did illegally transfer or aided or abetted others in illegally transferring a firearm; and the transfer was illegal in that transfer applications had not been filed with the Secretary of the Treasury or his delegate, the transfer tax had not been paid and the Secretary of the Treasury or his delegate had not approved the transfer.

REQUEST NO. 1

ILLEGAL POSSESSION OF FIREARM
ESSENTIAL ELEMENTS

The offense charged in the indictment has two essential elements, as follows:

First: That the defendant at the time and place charged in the indictment knowingly possessed a shotgun with a barrel less than eighteen (18) inches in length; and

Second: That the shotgun at the time and place charged was not registered to the defendant in the National Firearms Register and Transfer Record.

The government is obliged to establish each of these elements by proof beyond a reasonable doubt. The law never imposes on the defendant in a criminal prosecution the burden of calling any witnesses or of introducing any evidence. United States v.

Thompson, 518 F.2d 534 (8th Cir. 1975). United States v. Craven, 478 F.2d 1329 (6th Cir. 1973), cert. denied 414 U.S. 866, 94 S.Ct. 54, 38 L.Ed. 2d 85 (1974), reh. denied 414 U.S. 1086, 94 S.Ct. 606, 38 L.Ed. 2d 491.

REQUEST NO. 2

"MERE PRESENCE" NOT SUFFICIENT

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond reasonable doubt that the defendant was a participant and not merely a knowing spectator. See Pinkney v. United States, 330 F.2d 882 (5th Cir. 1967), cert. denied 390 U.S. 908, 88 S.Ct. 831, 19 L.Ed. 2d 876.

And as was held in U.S. v. Bryant, 461 F.2d 912 (6th Cir. 1972): It would be serious error to leave the jury with the impression that "mere presence" would be sufficient to justify conviction. And in U. S. v Eskridge the "mere presence" instruction is helpful in clarifying the "aiding and abetting" instruction if the circumstances warrant, 456 F. 2d, 1202 (9th Cir. 1972), reh. denied 408 U.S. 926, 92 S.Ct. 2507.

REQUEST NO. 3

TESTIMONY OF INFORMER AS INTERESTED WITNESS

The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest, or by prejudice against defendant. On Lee v. United States, 343 U.S. 747, 757, 72 S.Ct. 967, 973, 96 L.Ed. 1270 (1952); United States v. Smith, 303 F.2d 341 (4th Cir. 1962); cf. Rugendorf v. United States, 376 U.S. 528, 84 S.Ct. 825, 11 L.Ed 2d 303; Amaya v. United States, 273 F.2d 197 (10th Cir. 1967); Lujan v. United States, 348 F.2d 156 (10th Cir. 1965), cert. denied 382 U.S. 839, 86 S.Ct. 179, 15 L.Ed. 2d 125 (and cases cited therein); Lemons v. United States, 339 F 2d 761 (9th Cir. 1964), cert. denied 380 U.S. 985, 85 S.Ct. 1353, 14 L.Ed. 2d 276 (1965). See also Hoffa v. United States, 385 U.S. 293, 312 n. 14, 87 S.Ct. 408, 418.

REQUEST NO. 4

CIRCUMSTANTIAL EVIDENCE - FLIGHT, CONCEALMENT

In your consideration of the evidence of flight (concealment) you should consider that there may be reasons for this which are

fully consistent with innocence. These may include fear of being apprehended, unwillingness to confront the police, or reluctance to appear as a witness. The intentional flight or concealment of a defendant immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not of course sufficient in itself to establish his guilt. Bailey v. United States, 410 F.2d 1209 (10th Cir. 1969). Bird v. United States, 187 U.S. 118, 131, 23 S.Ct. 42, 47 L.Ed. 100 (1902); Allen v. United States 164 U.S. 492, 498, 17 S.Ct. 154, 156, 41 L.Ed. 528 (1896).

Respectfully submitted,

DARNELL J. BLACKETT
Attorney for Defendant

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States of America

RICHARD F. LAWLER
Assistant United States Attorney
Of Counsel

UNITED STATES OF AMERICA

vs.

GUILLERMO ROSADO, JR.,
a/k/a WILLIAM MONTIJO, JR.

New York, November 23, 1976,

10:15 a.m.

Trial resumed.

- -

(In open court, jury present)

THE CLERK: The Court is about to charge the jury. Any spectators wishing to leave the courtroom will do so now or remain seated until the completion of the Court's charge.

Marshal, please lock the door.

THE COURT: Ladies and gentlemen, I shall now give you your instructions on the basis of which you will consider the case that you have heard.

In order to return a verdict either of guilty or not guilty on any of the fout counts in this case, each juror must agree thereto. Such a verdict must be unanimous to the count on which you are reporting and must represent each juror's individual judgment.

It is your exclusive function to determine the

facts on the basis of your consideration of the evidence. On the other hand, it is your duty to accept these instructions as to what the law is and that must be followed in this case.

You may not disregard the law or attempt to rewrite it. Applying these instructions as to the law to the facts as you find them you will decide whether or not the defendant on trial before you is guilty of the charges that have been made against him, or any of them.

Your recollection of the facts is what counts here and not the recollection of counsel or even of my recollection. It is for you to determine the weight that you will give to the evidence, the credibility that you will extend to the witnesses who testify and the reasonable inferences that are to be drawn from the evidence that has been received.

No inference of guilt or innocence of the defendant on trial, or as to the credibility of any witness, should be drawn from any rulings or comments that I may have made during the trial, or any questions that I may have asked.

It is neither my intention nor my function to favor one side or the other, or to imply that I have any

views as to the credibility of either the witnesses or the guilt or innocence of the defendant, if I have any. That is your sole, exclusive function.

As I have indicated earlier, the indictment here is but a formal method of accusing a defendant of crimes and bringing the case into court for trial and determination. An indictment defines the charges against a defendant as to which the evidence at the trial must be addressed.

An indictment itself is not evidence that a crime has been committed and no inference of any kind may be drawn from its existence. The grand jury was not asked to determine whether the defendant is guilty or not guilty. That is your function, and solely your function, to consider and decide if the defendant is guilty of the charges.

The defendant pleaded not guilty to the indictment. That means that the Government has the burden of proving guilt beyond a reasonable doubt with respect to each element of the crimes that the defendant is accused of having committed. The defendant does not have to prove his innocence. He does not have to submit any evidence on the subject of his innocence or any evidence at all if he does not want to. The reason for that is that under our law, a defendant is presumed to be innocent and that

presumption continues throughout the trial and through your deliberations. It is only overcome when you have determined on the basis of your resolution of the facts that guilt was established beyond a reasonable doubt on each element of the crimes charged in respect of the count to which you are addressing yourselves.

By reasonable doubt, we just do not mean mathematical certainty or proof beyond all possible doubt. We mean a doubt which is sufficient to cause a prudent person to hesitate to act in a matter of importance to himself or to herself.

If the evidence which you believe is such as would induce a prudent person to act without hesitation in a matter of importance to herself or himself, then you may say you have been convinced beyond a reasonable doubt.

A reasonable doubt is not a speculative doubt. It is not caprice or whim. It is not a guess. It must be, as the words used say, a reasonable doubt.

If on the other hand, your mind is wavering or uncertain to the point where you have a doubt that would cause a prudent person to hesitate in a matter of importance to him or to her, then you have not been convinced beyond a reasonable doubt.

You are going to have to rely in this case on

your own common sense and general experience in evaluating the evidence. In this case the evidence produced has been both of a direct and indirect or circumstantial character.

The Government contends that its evidence establishes the defendant's guilt on each charge beyond a reasonable doubt. The defendant contends that no evidence has overcome the presumption of his innocence and that at least there is a reasonable doubt of his guilt.

You will apply to all the evidence the same standard of proof to satisfy yourself of the guilt of the defendant beyond a reasonable doubt, or else you must acquit him.

You must make your own evaluation of the evidence, including the testimony given by each of the witnesses and determine the credibility which you choose to give to such evidence. In weighing the testimony of the witnesses you can consider their relationship to the Government or to the defendant, if any, as the case may be, and any bias or interest in the parties or in the outcome of the case, the witness' manner while he was testifying, or she was testifying, that is, the witness' candor, intelligence, whether the witness equivocated or whether

the witness was frank and straightforward, the extent to which the witness has been corroborated or contradicted by other credible evidence or circumstances or inconsistencies within the testimony.

If you believe a witness has willfully testified falsely before you, you are privileged to disregard his or her testimony, or you do not have to. A man or a woman may be lying about part of what he or she says or may be telling the truth about other parts. He or she may be mistaken about parts and be accurate as to other parts. It is for you to decide, after you have scrutinized the evidence and weighed the demeanor of the witnesses.

Of course, evidence that any witness has been convicted in the past or criminal conduct may be considered in determining his credibility, by which is meant his worthiness of belief, but the evidence thereof as to the witness who was presented solely was to aid you in considering his believability. A prior conviction would not decide that for you. In and of itself, a conviction does not make a person necessarily unworthy of belief, but it will be one of the facts which will help you decide whether to believe him and how far.

The law recognizes two types of evidence, direct and circumstantial, either of which may be sufficient

to convict providing the jury, upon all the evidence, is satisfied beyond a reasonable doubt. Direct evidence, of course, if evidence given by a witness who was there, who was present at a conversation, or the commission of an act and testifies as to what he saw or what he heard or discovered, and what he knows of his own knowledge, something which comes to him by virtue of the senses of sight or sound or smell. Circumstantial evidence is, as I think most of you know, is evidence that tends to prove a disputed fact by proof of other facts and evidence which has a logical tendency to lead one's mind to conclude a fact in issue actually exists. Circumstantial evidence should not be given any less weight because it is circumstantial rather than direct.

The indictment in this case contains four counts or charges. It charges the defendant on trial in Count 1 with the crime of conspiracy with others to violate the Federal Gun Control Act of 1968; in Count 2, with making and altering a rifle with a barrel of less than 16 inches without filing a written application to make and register the firearm as required by law, paying the required tax and getting the required approval from the Secretary of Treasury or his delegate; in Count 3, with willfully and knowingly receiving and possessing

the unregistered firearm, and in Count 4, with willfully and knowingly transferring the cut-down rifle, although the required application for the transfer and registration had not been filed nor had approval been obtained, nor had transfer tax been paid.

The defendant on trial is charged not only with having done the things that are asserted against him, but at least having aided and abetted another to commit the offenses charged in this case, and as you will learn later in the charge, aiding and abetting another to commit a crime is equivalent to committing the crime itself.

I shall discuss the counts in the order in which they appear in the indictment.

In Count 1, the defendant is charged with conspiracy under Title 18 of the United States Code, Section 371, which provides in part that if two or more persons conspire to commit any offense against the United States, and one or more of those persons do any act to affect the object of the conspiracy, each is guilty of an offense.

The statutes involved in the Federal Gun Control law to which you will turn attention are the following, and I will give those to you all together so

that you will see the contour of what the law attempts to do under these statutes.

Title 26 of the United States Code, Section 5845 defines a firearm as including a rifle having a barrel or barrels of less than 16 inches in length, or a larger one that has been modified down to a barrel of less than 16 inches in length.

The statute in Section 5822 provides in part as follows with respect to making or altering a firearm.

"No person shall make a firearm"--and you will learn that altering an existing firearm is also making a firearm. I repeat, "No person shall make a firearm unless he has filed with the Secretary of the Treasury, or his delegate, a written application in duplicate to make and register the firearm on the form prescribed by the Secretary or his delegate, and has paid a tax payable on the making, and such payment is evidence by the proper stamp affixed to the original application form, and he must have obtained the approval of the Secretary or his delegate to make and register the firearm, and the application form shows such approval. Applications shall be denied if the making or possession of the firearm would place the person making the firearm in violation of the law.

As I have already told you, the statutes define the making of a firearm as altering or producing the firearm.

The statutes provide further for the payment of a tax on the making of a firearm as follows in Section 5821. First, the rate. "There shall be levied, collected and paid on the making of a firearm a tax at the rate of $200 for each firearm made. B, By whom made. The tax imposed by Subsection A of this section shall be paid by the person making the firearm. C, Payment. The tax imposed by Subsection A of this section shall be payable by the stamp prescribed for payment by the Secretary or his delegate."

The statues provide further that it is unlawful to receive or possess an unregistered firearm as set forth in Section 5861D reading as follows; "It shall be unlawful for any person to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record.

Now, should you be confused about all the talk that we read about in the newspapers about registering Saturday night specials, that has nothing to do with this case. This case has to do with a cut-down rifle with a barrel of less than 16 inches, and that kind of a

weapon, sometimes referred to incorrectly, but euphemistically as a "sawed-off shotgun," that kind of a weapon is the one we are discussing these requirements.

The statutes provide conditions on the transfer of a firearm as I have defined firearm for you. "A firearm shall not be transferred unless the transferor of the firearm has filed with the Secretary or his delegate a written application, in duplicate, for the transfer and registration of the firearm to the transferee on the application form prescribed by the Secretary of the Treasury or his delegate and any tax payable on the transfer is paid as evidenced by the proper stamp affixed to the original application form, and the application form shows that the Secretary or his delegate has approved the transfer and the registration of the firearm to the transferee.

So, I have now given you two statutes, one that taxes the making of a firearm and another that taxes a transfer of a firearm that has been made.

The transfer tax imposed by the statutes is referred to in Section 5811, reading as follows: "There shall be levied, collected and paid on firearms transferred a tax to be paid by the transferor and the tax shall be paid and be payable by the appropriate

stamps prescribed for payment by the Secretary or his delegate."

The federal law defines the word "transfer" as follows: "The term 'transfer,' and various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away or otherwise disposing of a firearm."

As I have already indicated to you, not only is the person who actually commits an illegal act guilty, but anyone who aids or abets him in the commission of the act is likewise guilty. It is not necessary for the Government to prove that the defendant personally and individually committed all of the acts alleged to constitute a violation of the federal statutes. It is enough if the Government provides beyond a reasonable doubt that the criminal acts were in fact committed and that the defendant knowingly and willfully caused such acts to be done, or knowingly aided or abetted another person in committing such acts.

Mere presence at the scene of the crime, or mere knowledge that a crime is being committed is not sufficient to connect a defendant therewith. That is, a spectator is not a criminal.

In order to aid and abet another to commit a

crime it is necessary that a defendant willfully associate himself in some way with a criminal venture, with a criminal act. It is necessary that he willfully participate in something that he wished to bring about and that he willfully endeavored by some action of his own to make it succeed. Thus, if the Government has proven here to your satisfaction beyond a reasonable doubt that the defendant knowingly and willfully associated with another who violated a provision of the federal law as I have explained it to you, and that the defendant knowingly and willfully participated in such venture or in such acts desiring to make them succeed through something he did himself, he has aided and abetted in the commission of a crime.

Guilt is personal. The defendant is to be considered solely on the basis of what it was proved he himself did, not what anyone else did. The fact that another, or others not before you at this time were involved in the federal law violation or pleaded guilty thereto cannot be held against the defendant, who, as I have said, must be judged on his acts, his participation, if any, his aiding and abetting crime, if in fact he did.

Turning now to the charges set forth in the

indictment, the conspiracy charged in Count 1 of the indictment was a conspiracy to violate sections of the United States Code which I have indicated to you previously in giving you the statutes.

In order to find the defendant guilty of conspiracy as charged in the indictment, you must find beyond a reasonable doubt, first, that at some time during the period from August 4 to August 8, 1975 a scheme or agreement existed between Guillermo Rosado and Osvaldo Rosado, his brother, and perhaps others, one of whom was referred to as "Rubin Rosado"; second, that it was part of this scheme or agreement to violate the possession and transfer portions of the Federal Gun Control Law of 1968 and, third, that Rosado knowingly and willfully associated himself with the conspiracy with the specific intent to violate the gun control laws.

Lastly, that an overt act, which you will learn means an open act by somebody in the alleged combine, was knowingly committed as alleged in the indictment in furtherance of the conspiracy.

I will read to you what the Government charges were the open acts, the acts which surfaced in relation to the alleged conspiracy.

What is a conspiracy? A conspiracy is a

scheme or combination or agreement of two or more persons to accomplish a criminal or unlawful act by criminal or unlawful means. The gist of the crime of conspiracy is the unlawful scheme, combination or agreement with the specific intent to violate the law. It makes no difference whether the conspirators succeeded in doing what they schemed to do. The law says that it is a crime to scheme the unlawful act by unlawful means.

A conspiracy has sometimes been called a partnership in criminal purposes in which each member becomes the agent of every other member.

Your common sense will tell you that when men in fact undertake to enter into a criminal conspiracy, they leave much to the unexpressed understanding. Conspirators do not usually reduce their agreement to writing or acknowledge them before a notary public, nor do they publicly broadcast their plans.

From its very nature, a conspiracy is almost always characterized by secrecy, rendering detection more difficult.

Thus, it is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly come to a common understanding to violate the law. Express language or specific words are not required

to indicate assent or attachment to a conspiracy. On the other hand, success of the venture, if you believe it was successful, is sometimes the best proof of the venture or the agreement.

The adage "actions speak louder than words" is applicable here. Usually the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other, and with the reasonable inferences flowing therefrom, show a scheme or conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If upon such consideration of all the evidence, direct or circumstantial, you find beyond a reasonable doubt that the minds of at least two of the alleged conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the conspiracy is established.

The indictment in this case charges that the conspiracy was formed and existed within the period August 4 to 8, 1975, and that at least one overt act was

committed during that period. Consequently the Government must established this beyond a reasonable doubt.

Once satisfied that the conspiracy charged existed you should consider whether the defendant before you knowingly and purposely entered the conspiracy with the specific intent to violate or aid and abet the violation of the gun laws I have mentioned.

You must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with awareness of at least some of the basic aims and purposes of the conspiracy?

Knowledge is a matter of inference from facts proved. It is not necessary that the defendant be fully informed as to the details of the scope of the conspiracy in order to justify any inference of knowledge on his part, but to have guilty knowledge the defendant need not know the full extent of the conspiracy and all of its activities and actors.

However, I want to caution you that mere association with one or more of the conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient. What is necessary is that the defendant participate with knowledge of at least some

of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

The extent of his participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he participated in it to a degree more limited than that of another coconspirator, he is equally culpable, so long as he was in fact a conspirator, a partner in the criminal enterprise.

A conspirator need not know all of his partners, if he was in fact a member of the conspiratorial partnership.

If you find that the alleged conspiracy existed and that the defendant under consideration was a member of that conspiracy, one further requirement must be established beyond a reasonable doubt by the Government, the requirement of an overt act, an open act.

An overt act is any step, action or conduct which is taken to achieve, accomplish or further the object of the conspiracy. It may be a perfectly legal act, it may be an illegal act. Was it a step in the process of achieving, accomplishing or furthering the objects.

The purpose of requiring proof of an overt act is that while parties might scheme and agree to violate a

law, they may change their minds and do nothing to carry it into effect, in which event their agreement would not constitute an offense. It would be just thought control.

As is the case with some of the overt acts alleged in this case, an overt act need not be a criminal act as I have said, neither need an overt act be the very crime which is the object of the conspiracy.

Now, the indictment gives us the following information. Overt acts. In furtherance of the said conspiracy, and to effect the objects thereof, the defendants committed the following overt acts, among others, in the Southern District of New York, and elsewhere.

"1. On or about August 7, 1975, Osvaldo Rosado and Guillermo Rosado, and Rubin Rosado, the defendants, met at 154 South Broadway, Yonkers, New York.

"2. On or about August 8, 1975, the defendant Osvaldo Rosado entered Rosner's hardware store on New Main Street, Yonkers, New York.

"3. On or about August 8, 1975, at 154 South Broadway, Yonkers, New York, the defendant Osvaldo Rosado handed a .225-calibre Savage Arms Rifle Model 340V, Serial No. 183906, with a barrel of less than 16 inches, to a special agent of the Bureau of Alcohol, Tobacco and

Firearms acting in an undercover capacity.

"4. On or about August 8, 1975, at 154 South Broadway, Yonkers, New York, the defendant Guillermo Rosado, received $150 in cash in payment for the firearm described in overt act No. '3' of this indictment.

"5. On or about August 8, 1975, in front of 154 South Broadway, Yonkers, New York, the defendant Osvaldo Rosado accepted $20 in cash for arranging the sale of the firearm described in overt act No. 3 of this indictment."

Proof of any one, any one of the overt acts which I have just read to you as alleged in the indictment by any member of the conspiracy is enough to establish the requirement of an overt act and taking it out of the category of just thinking about something without doing, going or arranging something in connection with carrying it out since the act of any member in furtherance of the conspiracy, the partnership, becomes the act of all the other members and the overt act need not have occurred at the precise time and place alleged in the indictment, but only substantially so.

Now, taking up the remaining counts in the indictment, 2, 3 and 4 in order.

Count 2 charges the defendant with illegally

making, that is, altering, a longer weapon into a rifle with a barrel or barrels of less than 16 inches.

The essential elements of the offense which the Government must establish beyond a reasonable doubt are the following:

First, that on or about the date charged in the count in question the defendant made or aided and abetted another to make a firearm, as that term has been defined for you; second, that the making occurred in the Southern District of New York, and the area in Westchester, of course, is in the Southern District of New York; third, that the making was in violation of law because the defendant had not filed a written application with the Secretary of the Treasury or because the tax had not been paid, or because the approval of the Secretary of the Treasury or his delegate for the making and registration of the firearm had not been obtained, and fourth, thatthe making was unlawful, willful and knowing.

It has been stipulated by the parties, and agreed between them, that no application was filed for making and registration of the firearm; that no making tax was paid; that no approval was given by the Secretary of the Treasury or his delegate to make and register the firearm. However, since you have to decide all of the

matters in the case, you must still decide for yourselves whether or not the Government has sustained its burden beyond a reasonable doubt.

An act is done knowingly if it is done voluntarily and purposely and not because of misunderstanding, mere neglect or other innocent reason.

An act is done willfully if it is done knowingly and deliberately. "Willful" does not mean that the defendant, in addition to knowing what he is doing, must also suppose he is breaking the law. You are not required to find that a defendant knew that an application for the making or registration of a firearm had not been filed or was required to be filed with the Secretary or his delegate, nor do you have to find that the defendant knew that the tax due and payable on the making of a firearm had not been paid or was required to be paid, nor do you have to find that defendant knew that the approval of the Secretary or his delegate for the making and registration of a firearm had not been secured, or was required to be secured. You need only find in respect to Count 2 that the defendant knew that the rifle was altered down below the 16-inch size.

Count 3 charges the defendant with unlawfully, willfully and knowingly receiving and possessing the

alleged unregistered cut-down firearm. In order to find the defendant guilty under the charge in Count 3 of receiving and possessing the firearm which is not registered to him in the National Firearms Registration and Transfer Record, you must find beyond a reasonable doubt as to the defendant each of the following three elements: first, that on or about August 7 and 8, 1975, the defendant did receive or had possession of a firearm within the meaning of the statute in question; second, that the firearm possessed was not registered to him in the National Firearms Registration and Transfer Record; third, that his possession was unlawful, willful and knowing.

If you find that the gun involved here was a firearm as that term has been explained, you must determine whether on or about August 7 and 8, 1975, the defendant received or possessed it.

To receive is to take into possession and control. To receive an article is to accept custody of it.

"Possession" means the following: the law recognizes two kinds of possession, actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it. A person who, although not in actual possession, knowingly has the power and

intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law also recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, their possession is joint.

If you find from the evidence beyond a reasonable doubt that a defendant had actual or constructive possession of the firearm described in the indictment, then you may find that the firearm was in the possession of the defendant within the meaning of the word "possession" as used in the statute.

The evidence in this case contains certificates showing that after a diligent search of the National Firearms Registration and Transfer Record, no record was found that the gun, which the Government claims was involved in this case, was registred to the defendant or his alleged conspirators. Fromsuch evidence you may find that the Government has sustained its burden of proving non-registration of the weapon beyond a reasonable doubt.

You may recall, further, that it has been stipulated that neither the defendant nor the others

alleged by the Government to be involved, registered the firearm with the National Firearms Registration and Transfer Record. Consequently, this element is not in dispute. You may consider the stipulation and, of course, must still decide for yourselves that the Government has sustained its burden beyond a reasonable doubt.

The instructions that I gave you previously in connection with Count 2 with regard to the element of knowledge and willfullness apply to your deliberations concerning the same element of the offense charged in Count 3. I instruct you that the Government is not required to prove as an element of Count 3 that a defendant actually knew that the weapon involved in this case was required by federal law to be registered in the National Firearms Registration and Transfer Record, nor is the Government required to prove that the defendant actually knew that the weapon was not so registered. It is sufficient if you find that the defendant in question was knowingly in possession of a firearm as that has been defined for you and was aware of what it was.

Count 4 charges the defendant with unlawfully, willfully and knowingly transferring. Remember, 2 was making, 3 was possession and now we come to trasnferring.

Transferring the alleged cut-down firearm as to

which the requisite application for transfer and registration had not been filed or approved and as to which the required transfer tax had not been paid. You must find each of the following elements as to Count 4 beyond a reasonable doubt in order to convict on this count.

First, that on or about August 7 and 8, 1975, the defendant transferred or aided and abetted another in transferring a firearm as that term has been defined; second, that the transfer was in violation of law because there was no filing of a written application with the Secretary of the Treasury for the transfer and registration, or that there was no payment of the transfer tax, or that there was no approval by the Secretary of the Treasury of the transfer and registration of the firearm. Finally, as the third element, you must find beyond a reasonable doubt that the transfer was unlawful, willful and knowing.

Again, as to the elements of willfullness and knowledge and intent, the definition thereof is the same as I have heretofore given to you.

The second element which I have called to your attention, that the transfer was a violation because of the several reasons that I called to your attention, I instruct you that those requirements are stated in the

alternative. You may find the second element if you are satisfied that an application had not been filed or that the tax had not been paid, or that the necessary approval had not been obtained.

You need not find that all three occurred in order to convict. Again, it has been stipulated in this case that neither the defendant nor any other alleged to be in the conspiracy had filed a written application for the transfer and registration of the gun, or paid the transfer tax, or obtained the approval of the Secretary of the Treasury to transfer and register the gun. Consequently, this element is not in dispute and you may consider the stipulation in your deliberations, but still will decide for yourselves whether or not the Government has sustained its burden beyond a reasonable doubt.

The flight of a defendant immediately after he discovers that he is wanted by law enforcement acts as a fact which, if proved, may tend to prove consciousness of guilt on the part of the defendant and may be considered and weighed by the jury in connection with all the other evidence. Of course, there may be innocent reasons for flight, such as fear or being apprehended, unwillingness to confront police or reluctance to be a witness.

Whether or not evidence of flight shows a consciousness

of guilt, and the significance, if any, to be attached to such circumstances, are matters for your determination and all of he facts and circumstances as shown in the case. The flight of a defendant does not create a presumption of guilt, but it is merely a fact to be considered by you, together with all the other evidence and circumstances in determining the guilt or innocence of the defendant.

Just a final word of caution and instruction. You have been convened to try the issues of fact arising out of this and not any other indictment. The issue you must respond to is whether this defendant violated the laws concerning the sale of firearms, the making of firearms, the possessing of firearms and the transfer of firearms. You are not here to express your views on whether you approve of methods or means of detection of law violators. So long as those methods are legal, you may not stray into interesting social or political judgments as to whether alleged violators, law violators, should be smoked out or apprehended by the particular means applied.

For example, the use of an informer in this case was entirely gallant, proper and not questionable. The testimony of an informer, however, must be examined and weighed with greater care than the testimony of an

ordinary witness. It is the conduct of the defendant on trial here that you are evaluating in the ultimate analysis. What this case gets down to is the question to be answered by the exercises of your common sense with respect to the evidence that you have heard.

Your function is to weigh the evidence in the case and to determine whether the defendant engaged in the criminal conduct described in the statutes, whether he is guilty or not guilty of a particular count you are considering, and your decision must be based solely on the evidence and the law and you must not be influenced by any assumption, conjecture or sympathy in the case either for the defendant or any member of his family or otherwise.

Your verdict in this case, when you get ready to report it, will be on each count separately, either guilty or not guilty, and your verdict will be announced by your foreperson, Miss Begley, the lady who sits in the first seat. She will be provided with pencil and paper. Should you wish to communicate with the Court, please do not communicate with anyone, even me, except in writing and having the writing signed by Miss Begley with her name. If you desire any of the exhibits, those will be sent to you in the jury room upon request. If you need any of the testimony reread or read, that can be done also.

I have now concluded my instructions, but I want to take a moment to talk to the lawyers. They may wish to call to my attention something that I may have overlooked or on which I may have misspoken. So if you will just relax in your seats I will talk to them and come back to you in a moment.

(At the side bar.)

THE COURT: Are there any exceptions or requests, Mr. Blackett?

MR. BLACKETT: I really do not have a very material exception, except that I believe that my stipulation had to do with Guillermo Rosado, that he filed no statement with the Secretary concerning the ownership or what have you of the gun, not of the others, I did not stipulate for the others because I am not concerned with them.

THE COURT: Any exceptions or requests?

MR. LAWLOR: No, your Honor.

THE COURT: All right, thank you.

MR. BUCHWALD: Your Honor, would your Honor want to indicate to the jury that they should not indicate the count in any notes?

THE COURT: No, it is not necessary.

(In open court.)

THE COURT: Ladies and gentlemen, I intended to

gjh

say to you that the stipulation was that this defendant did not do any of the filings or payments of tax, or obtain approvals as required. That was what the stipulation was. He was stipulating for himself that that was what did not occur.

All right, we will swear the marshal first, please.

(The marshal was sworn.)

(The alternate juror was excused.)

THE COURT: You may now go to the jury room.

(At 11:22 p.m., the jury retired to the jury room to deliberate on their verdict.)

THE COURT: I have here a copy of the indictment which can be sent in if the jury requests it. Counsel should look at it and see whether they are satisfied with itand the exhibits should be collected and handed to the clerk in the event that the jury want them.

We will stand in recess.

Mr. Blackett, we had a personal matter with you. You were 22 minutes late in getting started while we were sitting here waiting for you. What was your excuse?

MR. BLACKETT: I left my office at 10 minutes to 10:00 which would give me sufficient time to get here, to walk here. I nevertheless went down and took the subway

because I had not yet served the requests to charge on the Assistant U. S. Attorney. I got on the subway at Canal Street and that train just moved in and refused to move. People began to leave to go out, to go wherever they wanted to. I remained on the train until about ten o'clock and when I saw it was not pulling out I went upstairs and I tried to get a cab at Canal and Lafayette. I could not get a cab and it was then about 10 minutes past 10:00. I then began to walk and when I reached, I think, near White Street, I was then able to get a cab who brought me here, so I paid $1.50 to come here and still was 30 minutes late, 30 minutes from the time I left my office. I left at 10 minutes to 10:00 and it was 20 minutes past 10:00 when I arrived, using cab and subway, 30 minutes.

THE COURT: Your office is at 401 Broadway and I think you can walk here in exactly six minutes.

MR. BLACKETT: But I wanted to get here early enough to give the counsel the requests to charge.

THE COURT: It would have been courteous, as far as the jury was concerned, and possibly even the Court, for you to have acknowledged that you had detained everyone, but you did not choose to do that, you just sat right down.

MR. BLACKETT: I wanted to do that, but everything

seemed to be so fixed and ready.

THE COURT: You ought to express your convictions a little more vocally.

MR. BLACKETT: Your Honor, may we read the 3500 material?

THE COURT: Yes, place on the record the 3500 material.

MR. LAWLOR: May the record reflect that the following 3500 material was turned over to Mr. Blackett before the trial commenced: GX 3501A, grand jury testimony of Agent Kelly on 8/26/75. There are eight pages.

GX 3501B, grand jury testimony of Agent Kelly on 8/28/75, three pages.

GX 3501C, statement of Agent Kelly dated 8/21/75, two pages.

GX 3501D, case summary of Agent Kelly dated 9/18/75, and there are five pages.

GX 3501E, the complain dated 8/19/75, one page.

GX 3501F, notes of Agent Kelly dated 8/8/75, one page.

GX 3501G, report of expenditures dated 8/12/75, one page.

GX 3501H, payment to vendor request dated 8/27/75, five pages.

GX 3501I, notes of Agent Kelly dated 8/8/75, one page.

GX 3502A, report of Agent Doyle dated 8/11/75.

GX 3502B, notes of Agent Doyle dated 8/8/75.

GX 3503A, witness attendant certificate of Clyde Allen dated 11/13/75, one page.

GX 3503B, criminal record of Clyde Allen of the City of Yonkers, it is one page.

GX 3503C, rap sheet of Clyde Allen.

GX 3503D, State of New York rap sheet on Clyde Allen dated 22 January 1975, one page.

GX 3504A, Agent Waxman report on test-firing the report and it is one page.

MR. BLACKETT: I believe I received all of those.

(Recess.)

(Note received at 11:25 a.m.)

(In open court, jury not present.)

THE COURT: The jury has asked for some exhibits. They want the list of warrants issued to those in the conspiracy, I suppose what they want is the indictment, and Kelly's statement to the grand jury.

MR. BUCHWALD: The only--

THE COURT: The statement that they refer to is

Exhibit A?

MR. BUCHWALD: Yes.

THE COURT: I will send these into the jury, Exhibit A and Exhibits 20, 21, 22, 23, 24, 25, 26, a copy of the indictment, and Exhibit 27.

(Recess.)

(12:10 p.m.)

(In open court, jury not present.)

THE COURT: I have a note which says, "We have reached our verdict."

(Jury present.)

BY THE CLERK:

Q Miss Begley, did the jury reach a verdict?

A Yes, they have.

Q How does the jury find the defendant Guillermo Rosado on Count 1?

A Guilty.

Q Count 2?

A Guilty.

Q Count 3?

A Guilty.

Q And Count 4?

A Guilty.

THE COURT: Poll the jury, please.

THE CLERK: Members of the jury, listen to your verdict as it stands recorded. You say that you find the defendant Guillermo Rosado guilty as charged on each of Counts 1, 2, 3 and 4.

(Each juror, upon being asked, "Is that your verdict?" answered in the affirmative.)

THE CLERK: And so say you all.

THE COURT: Ladies and gentlemen, that concludes your services in this case with the thanks of the Court. Would you be good enough to report back downstairs to Room 109 and the clerk will give you such further instructions as may be necessary.

Thank you very much and I hope you have a pleasant Thanksgiving.

(Jury excused.)

THE COURT: Mr. Blackett?

MR. BLACKETT: May I reserve my motion until the day of sentencing, please?

THE COURT: No. Make your motions now, Mr. Blackett.

MR. BLACKETT: All right. At this time the defendant moves to set aside the verdict as being against the weight of all the evidence in the case.

THE COURT: The motion is denied. The issues were

certainly issues of fact and the resolution of those issues of fact seems eminently justified.

A presentence report will be ordered here and the date fixed for sentence will be January 4, 1977 at 2:00 p.m. in Courtroom 1106.

I will hear the Government on the subject of bail.

MR. LAWLOR: Your Honor, the Government would request that the defendant be remanded in custody until the date of sentence.

THE COURT: Mr. Blackett?

MR. BLACKETT: The defendant has come to the Court regularly during the time, since the time of his arraignment. It was stated that the defendant had fled the jurisdiction at the time of the arrest of his parents. Actually, this defendant did not even know about a warrant being out for his arrest and would have no awareness of it.

His leaving the jurisdiction at that time was for the purpose of getting a job. He went first to Pennsylvania where he worked in the Poconos during the summer and then in around November, he went down to Florida where he worked for approximately 10 or 11 months.

Now, his only arrest there had to do with his arrest in connection with this case for the purpose of his

extradition to New York. He is presently residing with his parents, his mother and father, and I feel that given the time, if his bail is continued such as it is, he will be able to get back here to court on the day of sentencing. I do not see any reason why he should leave and I do not believe he would leave. It would take, too, your Honor, some time for this man to get his business in order, whatever that is.

THE COURT: Those points do not appeal to me. The situation has changed materially and we do have the circumstances that you adverted to of the flight which you submitted a request to charge on and which I carried through.

I will order the defendant remanded pending sentencing in view of the nature and circumstances of the matter as disclosed on the trial. In the light of those circumstances, I would fix the sentence date on December 22 at ten o'clock in Courtroom 518. I believe that that concludes the matter.

ooo

jhe SENTENCING MINUTES 234

(pp. 162a-170a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- : 75 Cr. 878

GUILLERMO ROSADO, JR., :
a/k/a WILLIAM MONTIJO, JR.,
:
Defendant.
:

----------x

December 28, 1976

BEFORE:

HON. MILTON POLLACK,

District Judge

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York
BY: RICHARD LAWLER, ESQ.
Assistant United States Attorney

DARNELL BLACKETT, ESQ.
Attorney for Defendant.

(Case called.)

MR. LAWLER: Government is ready.

MR. BLACKETT: Defendant is ready.

THE COURT: Mr. Blackett, is there anything that you want to say on behalf of Mr. Rosado before imposition of sentence?

MR. BLACKETT: Yes, your Honor, just a few words.

THE COURT: You have had an opportunity to read the pre-sentence report?

MR. BLACKETT: Yes, I did have an opportunity to read it, and the report is a good one, it is better than usual.

THE COURT: I will be very glad to furnish your commendation to the Probation Department.

MR. BLACKETT: I submitted my own report and I say it is good and it is a good report.

On behalf of the defendant, your Honor, the fact that it has been about a month since the trial, but I still have the same feelings I had as to the guilty verdict. I do feel that the defendant was found guilty wholly by reason of his association with the witness Osvaldo, who had pleaded guilty to the indictment and was one of the co-defendants with Guillermo.

That is so much water over the bridge. The question is what can we do now, what will be done with Guillermo. Guillermo is only 22 years of age and his life is really ahead of him and constructively things can be done to help him and I feel that this ought to be done in his case.

He has expressed to me his willingness and his desire to go to school if given the opportunity through the sentencing process. He wants to finish high school and he tells me that he has discussed this with people in the place where he was incarcerated and it seems that there is an opportunity for him to do this should he be sentenced with a view to that end.

With that in mind I would ask the Court to grant him or to sentence him under the Youth Corrections Act, since he is only 22, and his prior record is not a bad one. There is one conviction and the conviction was for the possession of marijuana. That was really the purpose for which he was convicted prior to this case. In many parts of the country marijuana is being talked about as a non-drug and in many places they have talked about doing away with the law that punishes a person for possession --

THE COURT: Are you sure you are talking about this case?

MR. BLACKETT: I am talking about the sentencing of Guillermo and his prior conviction.

THE COURT: Are you sure you read the Probation Report here?

MR. BLACKETT: I did read the Probation Report.

THE COURT: Let me read to you from page 2 of that report which you read on his prior record.

On November 30, 1971, in Yonkers, on a charge of being a youthful offender, he was sentenced to three years probation on March 19, 1973.

MR. BLACKETT: That's correct.

THE COURT: On November 27, 1972, in Yonkers, New York, he was charged with again being a youthful offender operating a motor vehicle without proper plates, improper registration, no inspection sticker, and a quantity of marijuana in his possession.

MR. BLACKETT: That was one conviction, your Honor.

THE COURT: Again he was sentenced to three years probation on March 19, 1973.

MR. BLACKETT: That is the same one.

THE COURT: Then there was an indictment that was dismissed.

MR. BLACKETT: That's right. I thoroughly

jhe

investigated that.

THE COURT: On October 12, 1973 a woman's body was found in the basement of 117 Ludlow Street, Yonkers.

MR. BLACKETT: Which he had nothing to do with.

THE COURT: She was gagged, her hands and legs were bound, and the police determined she had been robbed of about $2,000.

MR. BLACKETT: Which he had nothing to do with, your Honor. I spoke to the attorney who represented him then.

THE COURT: The charge against him was dismissed for insufficient evidence after the Court ruled that his statement was inadmissible for legal reasons. But a co-defendant was convicted and sentenced to 25 years to life.

MR. BLACKETT: I trust that the Court will not hold that against this defendant.

THE COURT: I don't hold it against him, but his involvements with the law are not as superficial as you would purport to indicate.

MR. BLACKETT: Your Honor, I not only went up to White Plains and went over the entire files, but I discussed that case with his prior attorney, and it was his feeling that he would have gone to trial if he had to, and

he felt that he would have gotten the case against him dismissed in any event.

THE COURT: All right. What else do you have to say?

MR. BLACKETT: I am more interested, your Honor, in whether the Court will assist Mr. Guillermo Rosado, who is only 22 years of age, in salvaging what remains of his life under the Youth Corrections Act. I believe and I would hope --

THE COURT: You have made that point. You are suggesting that he be sentenced as a young adult offender. You have made that point.

MR. BLACKETT: Yes, your Honor.

THE COURT: Anything else?

MR. BLACKETT: That is it.

THE COURT: Guillermo Rosado, do you want to say anything on your own behalf before imposition of sentence?

THE DEFENDANT: Yes, I would like to say something.

THE COURT: Yes, sir.

THE DEFENDANT: I like to say that I was found guilty of charges of a crime that I did not commit. Even though I [illegible] trying -- while I am in jail I am trying to make

the best out of it. Right now I am going to school. The teacher's name is Mrs. Morgenstern. She gave me a certificate to bring to Court, which I forgot, I left back at the MCC. I hope the Court will give me a chance to finish school or give me some kind of trade if I am going to be sentenced for the future, to do me some good.

THE COURT: Does the Government have anything to say here?

MR. LAWLER: No, your Honor.

THE COURT: The Court finds that the defendant was 22 years of age at the date of conviction and that there are reasonable grounds to believe that the defendant will benefit from treatment under the Youth Corrections Act, 18 USC Section 4216.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for treatment and supervision pursuant to 18 USC Section 5010 (b) until discharged by the United States Parole Commission as provided in 18 USC Section 5017.

The defendant is advised of his right to appeal and if he cannot afford to do so an attorney will be appointed. The present attorney, who tried his case, will not be relieved on the appeal.

I would like to find out, was an affidavit of financial status filed here on behalf of this defendant?

MR. BLACKETT: I think I filed one in Magistrate' Court, your Honor.

THE COURT: Is that correct, Mr. Rosado, you filed an affidavit that you cannot afford counsel or the expenses of a case?

THE DEFENDANT: Yes.

THE COURT: Have you got any financial means at all?

THE DEFENDANT: No, your Honor.

THE COURT: What was your last job?

THE DEFENDANT: I was a shipping and receiving clerk.

THE COURT: How much did you make?

THE DEFENDANT: $97, 37 1/2 hours.

THE COURT: How much did you save?

THE DEFENDANT: Well, I just started working when I was released from the custody of the prison. I had no clothes, I had lost everything I had when I was brought up to New York from Florida. I had no chance to save no money at all. I was buying some clothes, some shoes, things that I need.

THE COURT: You spent all your money on your

jhe

clothes and shows and what you needed, is that right?

THE DEFENDANT: Yes.

THE COURT: You have no savings?

THE DEFENDANT: No.

THE COURT: And you can't afford a lawyer?

THE DEFENDANT: No.

THE COURT: All right.

This sentence is imposed on Counts 1 through 4, to run concurrently.

That completes the matter.

MR. BLACKETT: Thank you, your Honor.

* * * * * * * * *

NOTICE OF MOTION FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE FOR A NEW TRIAL (Filed November 30, 1976)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

:

75 Cr. 878

-against-

:

GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr., : NOTICE OF MOTION

:

Defendant.

- -x

SIR:

PLEASE TAKE NOTICE, that a motion will be made before Honorable Judge Milton Pollack at the United States District Court, Southern District of New York, Foley Square, New York, New York, Room 518 on the 7th day of December, 1976, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for judgment acquitting defendant, Guillermo Rosado, notwithstanding the verdict finding him guilty in the above entitled action or in the alternative, for a new trial.

Dated: November 29, 1976.

Yours, etc.,

DARNELL J. BLACKETT,
Attorney for Defendant.
Office and P. O. Address
401 Broadway
New York, N. Y. 10013
Phone (212) 925-3552

TO

ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

Richard F. Lawler, Esq.,
Assistant United States Attorney,
Of Counsel

BEST COPY AVAILABLE

DEFENDANT'S MOTION
(Filed November 30, 1976)
(pp. 172a-173a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA,

: 75 Cr. 878

-against-

: MOTION FOR JUDGMENT OR ACQUITAL NOTWITHSTANDING THE VERDICT and, IN THE ALTERNATIVE, FOR A NEW TRIAL

GUILLERMO ROSADO, JR., a/k/a "William Montijo, Jr.,

:

Defendant.

- - - - - - - - - - - - - - - - - - - -x

Defendant moves the Court to set aside the verdict of guilty returned in the above-entitled action on November 23, 1976, and to enter judgment in accordance with the motion for judgment of acquital made by the defendant at the close of all the evidence herein and renewed after the verdict.

In the alternative, defendant moves the Court to set aside the verdict and grant him a new trial for the following reasons: The evidence was insufficient to sustain the conviction on the four counts of the indictment for which the verdict was rendered, there being no evidence introduced by the Government, direct, circumstantial or mute, for that matter, connecting the defendant with the crime charged in the indictment.

On the contrary, such evidence as was offered by the Government was, by its witnesses, in conflict- other than agreement that defendant was observed attempting to cut part of the gun barrel off and that he received some money from a Government's witness- or contradicted by defendant's witness in chief whose testimony that the defendant played no part in the transaction was supported in part

by the Government's chief witness' testimony that he discussed "RUBIN ROSADO'S" ownership of gun in evidence with the named defendant not on trial.

Direct evidence offered on behalf of defendant established that OSVALDO ROSADO owned the gun and negotiated for its sale using his brother's name therein to obtain a better price. All discussions concerning the gun, complete with delivery, was had with him, none with the defendant, spectator for a limited time

Too, highly prejudicial and inflamatory statements were made to the jury concerning the use of guns in the Government's summation following the summation of defense counsel.

DARNELL J. BLACKETT,
Attorney for Defendant
Office and P. O. Address
401 Broadway
New York, N. Y. 10013

AFFIDAVIT OF RICHARD F. LAWLER IN OPPOSITION TO MOTION (pp.174a-175a)

RFL:cr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-v- : AFFIDAVIT

GUILLERMO ROSADO, JR., a/k/a WILLIAM MONTIJO, JR., : 75 Cr. 878

Defendant. :

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK : SS.
SOUTHERN DISTRICT OF NEW YORK)

RICHARD F. LAWLER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., in the Southern District of New York, and as such am in charge of the prosecution of this case and am fully familiar with the facts of this case.

2. This affidavit is submitted in opposition to defendant's motion for acquittal or in the alternative for a new trial.

3. Defendant was convicted, after a jury trial, of conspiracy illegally transferring, possessing and making a firearm.

4. The evidence presented in support of the Government's charges consisted in part of the following:

a. Testimony by a special agent of the Bureau of Alcohol, Tobacco and Firearms that he observed the defendant sawing, with a hacksaw, the barrel of the firearm and that he paid the defendant $150 for the

RFL:cr

sawed-off weapon. The agent also testified that said weapon fit within the definition of "firearm" as set forth in the statue.

b. Testimony by an informant which corroborated in all significiant respects the testimony provided by the Special Agent.

c. A stipulation that the weapon had not been registered to the defendant and additional documentary evidence that the weapon was not registered to any of the individuals involved; nor had they received permission to transfer or make the weapon.

d. In addition, there was evidence of the defendant's flight, showing consciousness of guilt.

5. The defense consisted of often conflicting stories by the defendant's mother and brother. ~~which~~ The jury had ample opportunity to consider the credibility of these witnesses and the believability of their stories.

6. Taken together there was more than sufficient evidence to support the jury's finding of guilty.

7. Defendant's claim of inflammatory remarks by the Government in summation is without basis. It should be noted that no such objection was made at trial.

WHEREFORE defendant's motion should be denied in all respects.

RICHARD F. LAWLER
Assistant United States Attorney

Sworn to before me

this day of December, 1976.

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

FEDERAL COURT
SECOND CIRCUIT

UNITED STATES OF AMERICA,

- against -

GUILLERMO ROSADO, JR., a/k/a William Montijo, Jr.,
Defendant-Appellant.
On Appeal from the United States District Court for the Southern District of New York

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF *ss.:*

I, James A. Steele *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 112 West 136th Street; New York, New York

That on the 29th *day of* March, *19* 77 *at* One St. Andrews Plaza New York, New York 10007

deponent served the annexed Appendix *upon* U.S. Attorney Southern Dist. Robert B. Fiske Jr.

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this 29th *day of* March, *19* 77

James A. Steele

James A. Steele

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977